

2005

# Geralynn Myrah v. Klaus Campbell and Shannon Campbell, tenants : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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GERALYNN MYRAH, landlord,

Plaintiff, Appellant  
and Cross-Appellee,

vs.

KLAUS CAMPBELL, and  
SHANNON CAMPBELL, tenants,

Defendants, Appellees  
and Cross-Appellants.

**BRIEF OF APPELLEES**

Appellate Court No. 20050660-CA

Appeal from the Third District Court  
Salt Lake County  
Judge Glenn K. Iwasaki

Trial Court No. 000908772

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**JUN 29 2006**

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## **STATEMENT OF JURISDICTION**

This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-(3)(j) (2005).

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

Issue #1: Whether the trial court erred in denying the Motion For Directed Verdict filed at the conclusion of Landlord's case-in-chief.

Standard of Review: "We review a directed verdict under the same standard employed by the trial court." Lee v. Langley, 2005 UT App 339, ¶7 (quoting Carlson v. Distrib. Co. v. Salt Lake Brewing Co., 2004 UT 227, ¶13, 95 P.3d 1171). See Trans., Vol. I, 212-213.

Issue #2: Whether the trial court erred interpreting the Utah Fit Premises Act.

Standard of Review: "Questions of statutory interpretation are . . . questions of law that are reviewed 'for correctness, giving no deference to the district court's interpretation.'" Pearson v. Lamb, 2005 UT App 383 (quoting Board of Educ. v. Sandy City Corp., 2004 UT 37, ¶8, 94 P.3d 234). See Trial Transcript, Vol. II, 540:13-17.

Issue #3: Whether the trial court erred in preventing the Campbells' witness, Mr. Carter Hill, from testifying that the electrical wiring, electrical outlets, and entire electrical system in the main living area of the premises were in violation of the Salt Lake County Health and Electrical Code.

Standard of Review: "Trial courts are afforded broad discretion in determining the admissibility of evidence; thus we will not disturb a trial court's ruling whether to admit or exclude evidence absent an abuse of discretion." Lee v. Langley, 2005 UT App 339, ¶9. See Trial Transcript, Vol. I, 296:21-298:15, 310:20-312:13.

Issue #4: Whether the trial court erred in dismissing the Campbells' counterclaims.

Standard of Review: "We review a trial court's grant of a motion for summary judgment for correctness, affording no deference to the trial court." 3D Construction & Dev., LLC v. Old Standard Life Ins. Co., 2005 UT App 307 (citing Ford v. American Express Fin. Advisors, 2004 UT 70, ¶21, 98 P.3d 15). See Utah R.Civ.P. 54.

Issue #5: Whether the trial court abused its discretion in refusing to award reasonable expenses and attorney fees to the Campbells after the Campbells prevailed on their Motion To Compel, which detailed nearly three years of discovery abuse by Landlord.

Standard of Review: "Utah Rule of Civil Procedure 37(a)(4) requires the trial court to award the moving party its 'reasonable expenses incurred in obtaining the order, including attorney fees.'" Featherstone v. Schaerrer, 2001 UT 86, 34 P.3d 194, 207. The trial court's decision will not be disturbed absent an abuse of discretion. See Id. However, the decision not to grant an attorney fee may also be a question of law reviewed for correctness. See Keith Jorgensen's, Inc. V. Ogden City Mall Co., 2001 UT App 128, ¶11, 26 P.3d 872. See Utah R.Civ.P. 54.

Issue #6: Whether the trial court erred in denying the Campbells' Motion For Directed Verdict, Motion For Judgment Notwithstanding The Verdict, Motion To Set Aside Judgment, Or, In The Alternative, For New Trial.

Standard of Review: "To successfully challenge an ultimate finding of fact, 'an appellant must first marshall all the evidence in support of the finding and then demonstrate that



the evidence is legally insufficient to support the finding even when viewing it in a light most favorable to the court below.’” Parduhn v. Bennett, 2005 UT App 22, ¶25 (quoting Chen v. Stewart, 2004 UT 82, ¶76, 100 P.3d 1177). Although a trial court has broad discretion when ruling upon post-trial motions (and the trial court’s decision will not be overturned absent a clear abuse of discretion), if a trial court’s decision to deny a new trial is the result of a determination of law, such a legal decision is reviewed under a correctness standard. Crookston v. Fire Ins. Exchange, 860 P.2d 937 (Utah 1993).

### **SUMMARY OF ARGUMENTS**

The Campbells were not the legal cause of Landlord’s alleged damage because Landlord failed to establish a prima facie case for breach of contract. Landlord’s failure to present any evidence showing Landlord performed her contractual obligations is a failure of consideration entitling the Campbells to rescind the lease agreement and move-out of the premises prior to expiration of the lease term. The trial court erred when it denied the Motion For Directed Verdict filed by the Campbells.

The trial court erred in its interpretation of the Utah Fit Premises Act when it ignored Landlord’s obligation to present evidence the premises were up-to-Code. See Utah Fit Premises Act, Utah Code Ann. § 57-22-3(1) (every residential rental unit shall be “*in a condition fit for human habitation and in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the residential unit is located.*”). The

trial court's failure to address the statutory requirement that Landlord's rental property be up-to-Code is error.<sup>1</sup>

The trial court erred in preventing Mr. Carter Hill from testifying that the electrical wiring, electrical outlets, and entire electrical system in the main living area of Landlord's rental property were in violation of the Salt Lake County Health and Electrical Code because Mr. Hill was never "retained" by the Campbells as an expert witness.

Granting Landlord's motion for summary judgment without providing an opportunity for the Campbells to present evidence showing that written notice to Landlord was not required because Landlord had **actual knowledge** of the Health Code violations, is error.

The trial court committed error when it refused to award reasonable expenses and attorney fees to the Campbells after they prevailed on their Motion To Compel, which detailed nearly three years of discovery abuse by Landlord.

In their post-trial motions, the Campbells sought relief on the grounds that Landlord failed to present any evidence that the premises were up-to-Code, and therefore, Landlord's failure to tender her performance obligations under the lease agreement (*i.e.*, tender premises that were up-to-Code), entitled the Campbells to move-out of the premises prior to expiration of the lease term. The trial court's denial of these post-trial motions is error.

### **STATEMENT OF THE CASE**

The Campbells elect not to submit a Statement pursuant to Utah R.App.P. 24(b).

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<sup>1</sup> A copy of the trial court's decision at the conclusion of trial is attached as part of the addendum. See Utah R.App.P. 24(a)(11)(C), Trial Transcript, Vol. II, 538:23-570:7.

## STATEMENT OF FACTS

1.     **The Premises: 1433 Mulberry Way.** Through the “Geralynn Myrah Family Trust” Appellant Geralynn Myrah (“Landlord”) owns and controls residential rental property located at 1433 Mulberry Way, Salt Lake County, Utah (the “premises”), and Landlord owns and controls other rental properties in Utah, Nevada, and California. See Trial Transcript, Vol. 1, 75:5-11 (A. “*I believe I had six rental properties in total.*”).

2.     **Landlord Lives in Bay Area.** Both during and after her career as an executive with Cisco Systems, Landlord resided in Sunnyvale, California. Landlord has never lived in the State of Utah. See Trial Transcript, Vol. 1, 74:18-25; 112:8-23 (Q. “*You’ve never lived in the State of Utah, have you?. A. No, I haven’t.*”).

3.     **Landlord Does Not Use Property Manager.** Despite owning multiple rental properties in Utah, Landlord does not use the services of a rental property manager to repair, maintain or check-on her Utah rental properties. See Trial Transcript, Vol. 1, 112:14-16 (Q. “*You don’t use a property manager in the State of Utah, do you? A. No, I don’t.*”).

4.     **Landlord Offers to Rent 1433 Mulberry Way as a 5-Bedroom House with a Finished Basement.** On June 6, 1998, a rental offer appeared in a Utah newspaper:

SANDY, 3 bdrm, 2 bath + large bsmt, with 2 bdrm.  
Fixups/improvements in progress. \$1,000/mo. 1433 Mulberry  
(8220 S.) 568-4622.

See Addendum, Def. Exhibit 7 (emphasis added).

5.     **The Campbells Believe They Were Renting a 5-Bedroom House.** The Campbells believed they were renting a 5-bedroom house when they moved to Utah, and that

is why Klaus Campbell contacted Landlord. See Trial Transcript, Vol. 2, 335:3-336:11, 343:10-24 (Q. “*Did you expect that what you were renting was a five bedroom house with a basement that was going to be useable?* A. *Yes, absolutely.*”), 433:8-15. Landlord considered the newspaper advertisement to be an offer to rent a 5-bedroom house. See Trial Transcript, Vol. 1, 85:9-13 (Q. “*Ms. Myrah, do you consider that rental advertisement to be an offer to rent a property that has a total of five bedrooms that could be used by people to live in?* A. *Yes.*”). In reality, the basement was uninhabitable.

6. **Klaus Campbell Visits 1433 Mulberry Way at Night.** After speaking with Landlord, Klaus Campbell visited the premises while he was in Utah preparing to start a new life with his family. Mr. Campbell visited 1433 Mulberry Way when it was “*dark*” and he observed “*crunchy filthy*” carpet as well as “*a foul smell*” he thought was vomit or sewage, and that “*smelled bad.*” See Trial Transcript, Vol. 2, 337:11-25 (Q. “*What did it smell like? Did it smell like anything in particular?* A. “*Well, a combination between – it was like throw up or sewage or –.*”).

7. **Mr. Campbell Observes Other Health and Safety Hazards.** During his visit to 1433 Mulberry Way, Mr. Campbell noticed that the basement was still under construction, and had not yet been finished (A. “*It was just concrete walls. Basically like they started framing up –.*”), and that “*cabinet doors were missing*” and “*light fixtures were exposed.*” See Trial Transcript, Vol. 2, 338:7-25 (Q. “*Explain what you mean by light fixtures were exposed. What does that mean?* A. *Well, in the main bathroom there was no lights and just wires coming out.*”).

8. **Basement Walls Without Insulation or Electrical Outlets.** Mr.

Campbell saw the basement while it was still under construction and the alleged “fixups/improvements” advertised by Landlord were supposedly in progress. Mr. Campbell noticed that there was no insulation on the walls to insulate against dampness, and he saw no electrical outlets or floor covering on the cement floor of the basement. This was the condition of the basement “living area” during the entire lease term because Landlord never made good on her promise to rent a 5-bedroom house. See Trial Transcript, Vol. 2, 341:22-342:12, 343:10-15 (Q. *Were you ever able to use the basement in that house at any time during your tenancy?* A. *No. We used the basement only for laundry.*”).

9. **Violation of Salt Lake County Health Code.** An uninsulated cement wall

having no electrical outlets is a violation of the Salt Lake County Health Department Health Code Regulations regarding habitable rooms, and has been a violation since Salt Lake County adopted these health regulations on June 4, 1981. See Def. Ex. 54; see ,e.g., Section 6.8 (Requirements for Habitable Basements Specified), Section 9.7 (Adequate Electrical Service, Outlets and Fixtures Required), etc. See also Trial Transcript, Vol. 1, 227:14-25.

10. **Mr. Campbell Discusses Condition of House with Landlord.** After

looking the house at night, Mr. Campbell called Landlord and they talked about the condition of the house. Landlord assured Mr. Campbell that the electrical work in the basement and all of the other unfinished fixups and improvements would be complete (including the crunchy filthy carpet) by the time the Campbell family moved to Utah on June 15, 1998. See Trial Transcript, Vol. 2, 342:13-343:9 (A. *“You know, by the time we had moved in for sure.”*).

11. **Landlord Tells Mr. Campbell “Fixups/Improvements’ Are In Progress” and Everything Would Be Finished Before the Campbells Moved to Utah.** Like it stated in the newspaper advertisement, “fixups/improvements” were in progress at the alleged 5-bedroom house, and Landlord assured the Campbells that work would be complete before the Campbell family moved to Utah. In reliance upon Landlord’s statements, Klaus and Shannon signed the lease believing the house would be up-to-Code by the time they arrive in Utah. See Trial Transcript, Vol. 2, 439:20-440:24.<sup>2</sup>

12. **Landlord Lies to the Campbells.** The alleged fixups and improvements were nowhere near complete by the time the Campbells arrived in Utah, and in fact were never finished as promised by Landlord. See Trial Transcript, Vol. 2, 342:13-343:15. Eventually, Landlord admitted the basement was never finished, and she eventually admitted that the walls in the basement were cement. See Trial Transcript, Vol. 1, 95:8-96:3 (A. “*I wanted to complete the finish in the basement. The basement was partially finished, ... I wanted him [Gus Dixon, the handyman] to sheet rock and finish the walls in the family room portion of the basement. I wanted him to frame in a bathroom and a laundry room in the basement. I asked him for estimates. Q. So the walls down in the basement were cement? A. In the family room area.*”).

13. **Basement Uninhabitable Because of Sewage Leak.** In addition to the uninsulated cement walls and floor, and the absence of electrical outlets in the basement, the

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<sup>2</sup> The word “none” appeared at the end of the lease agreement, dated June 15, 1998. However, that phrase was surreptitiously inserted in the contract by Landlord *after* it was signed by the Campbells. This term contradicts the dealings by the parties. See T. Trans., Vol. 1, 440:6-24.

Campbell family could not use the two basement “bedrooms” because of a foul stench permeating the basement. From the first day of the lease (June 15, 1998) until the Campbells moved-out one month prior to expiration of the lease term, there was an incessant sewage leak in the main sewer line. See Trial Transcript, Vol. 2, 343:16-344:11 (**Q.** *Was this – where was this area in relation to the upstairs bathroom?* **A.** *It was directly underneath the upstairs bathroom.*”), Vol. 1, 272:15-23 (**Q.** *Tell me what – tell me what the smell was like. Tell me what you remember.* **A.** [Neighbor Shane Degnan] *It was like mildew – a mix between mildew and urine.*”).

14. **Violation of Salt Lake County Health Code.** Landlord’s failure to repair the sewage leak rendering the entire basement uninhabitable is a violation of the Salt Lake County Health Department Health Code Regulations. See Def. Ex. 54; see, e.g., Section 5.1 (Occupying or Letting of Unfit Dwelling or Dwelling Unit Unlawful), Section 5.2 (Failure to Maintain Dwelling or Dwelling Unit Unlawful), Section 5.14 (Prevention of Toxic Substances Required), Section 5.15 (Control of Drainage of Standing Water is Required), Section 5.17 (Vacated Building or Premises To Be Left In a Sanitary Condition), Section 6.4 (Required Bathroom and Kitchen Facilities), Section 9.9 (Adequate Plumbing Fixtures, Water Pipes, and Waste Pipes Required), etc. See also Trial Transcript, Vol. 1, 224:16-20 (**Q.** *Is the presence of stagnant water or human excrement that was leaking from a toilet present a health or safety hazard to the occupants?* **A.** [Michael Dalley, Salt Lake County Health Inspector] *Well, sure, yeah. You don’t want sewage in your house. It’s full of bacteria, all sorts of bad stuff.*”).

15.     **Landlord Admits Her Rental Property Must Be Up-To-Code.** Landlord claims to be familiar with the Salt Lake County Health Department Health Code Regulations, and she acknowledged she had to comply with the Health Code prior to renting her property. See Trial Transcript, Vol 1, 86:5-87:23 (Q. *“Have you reviewed those health department regulations, Ms. Myrah, before today?”* A. *I believe I have, yes. ...* Q. *Are you aware that – in your own opinion — that you have to comply with those Salt Lake County health regulations before you rent . . . to tenants?* A. *Yes.”*).

16.     **First Day of Lease Term.** On June 15, 1998, Klaus, Shannon and their three young children (Hunter, age 3; Ryan, age 5; and Erin, age 9), moved from Colorado to Utah to begin a new life selling baked goods at their family-run bakery. See Trial Transcript, Vol. 2, 488:8-15. The Campbells were devastated when they arrived in Utah and saw the condition of 1433 Mulberry Way. On the first day of the lease term, Landlord was at her home in Sunnyvale, California preparing for her annual European holiday. See Trial Transcript, Vol. 1, 74:17-25 (Q. *“Where did you go on your trip in June?”* A. *Norway.”*).

17.     **Neighbors Corroborate Squalid Conditions on Day #1.** Immediately prior to the Campbell family moving-in, Bonnie Sackett, a real estate agent who lived across the street, went inside 1433 Mulberry and it was *“a wreck.”* See Trial Transcript, Vol. 1, 250:11-251:24 (A. *“The door is open, and I walk in and my first thought is, ‘Oh my.’ This house is a wreck from the front door on. ... I was absolutely aghast.”*). *“Everything just looked filthy – disgusting, filthy. It made your skin crawl. It just – I’ve never seen anything like it.”* See Trial Transcript, Vol. 1, 252:4-6. Bonnie Sackett also testified the house *“was not in good*



shape’ and “it just looked seedy.” See Trial Transcript, Vol. 1, 244:1-22. Ms. Sackett also observed blue paint on the exterior of the premises long before the Campbells arrived (Landlord claimed damages from allegedly having to repaint the entire house because there was blue paint placed on the house by the Campbells). See Id. Landlord rented this house, in this condition, to the Campbells and their three children, ages 3, 5 and 9.

18. **Other Neighbors Corroborate Run-Down Condition of House.** Shane Degnan and his wife Michelle, were present at 1433 Mulberry Way on June 15, 1998. Shane and Michelle Degnan lived across the street, and Shane’s observations about the condition of the premises corroborate testimony from Klaus and Shannon Campbell, and Bonnie Sackett. Shane Degnan testified that just prior to the Campbell family moving to Utah, “my wife and I thought it was – considered it a drug house. ... You know, the grass was dead and people driving on the lawns,...” See Trial Transcript, Vol. 1, 265:17-25, 267:12-21 (“Everything was falling down and there was graffiti on the – like inside the carport. ...”).

19. **House Had To Be Cleaned Extensively Before Move-In.** After the Campbells arrived, Shane and his wife helped clean 1433 Mulberry Way before the Campbells were able to move-in. See Trial Transcript, Vol. 1, 268:1-24 (“... I guess they had made the decision that there was no way they were going to put their belongings inside the house until they cleaned it. ... it was unbelievably unsanitary. ... it [was] awful.”). Kitchen cabinets were falling-off the hinges, there were no screens on the windows, and there was garbage strewn about the house. See Trial Transcript, Vol. 1, 270:8-13, 271:20-24 & 273:25-274:21 (“The

*house was unsanitary, it was awful, ... it was terrible.”*). The entire cleaning process took “*four or five days.*” Id. 274:15.

20. **Infestation of Cockroaches.** From the moment the Campbell family arrived in Utah, 1433 Mulberry Way was plagued with an infestation of cockroaches and other vermin. See Trial Transcript, Vol. 1, 269:4 (A. [Neighbor Shane Degnan] “*The cockroaches just blew me away.*”) (emphasis added). Although the problem was alleviated somewhat by Mrs. Campbell using Boric acid (a potent chemical harmful to humans), the cockroach infestation persisted. See Trial Transcript, Vol. 2, 446:1-23 (A. “*Nothing was working.*”) Despite the obvious health hazards posed by these disease-spreading critters, Landlord refused to pay for an exterminator. See Trial Transcript, Vol. 2, 428:14-17, 443:1-445:8 (A. “*No, she refused to pay.*”). In fact, Landlord refused to do anything despite Mrs. Campbell’s repeated pleas for help. See Trial Transcript, Vol. 2, 445:10-25 (Q. “*What did she [Landlord] say to you?* A. *She said, ‘I didn’t pick the house. You did.’*”) (emphasis added)

21. **Cockroach Infested Refrigerator Had To Be Replaced.** The cockroach infestation was so bad the Campbells had to completely remove the refrigerator and replace it with a new one they had purchased themselves. See Trial Transcript, Vol. 2, 363:6-24. In doing so, Mr. Campbell accidentally ripped a small tear in the linoleum underneath the refrigerator because the Landlord’s cockroach infested refrigerator did not have wheels. Of course, replacement of the already “*filthy,*” “*cracked*” and “*peeling*” linoleum was one of the items of damage claimed by Landlord at trial. In fact, Landlord claimed that the entire kitchen

floor had to be replaced at a cost of more than \$2,000. See Trial Transcript, Vol. 1, 61:20-23 (A. [Landlord] “*The lino – the cost to replace the linoleum was about \$2200.*”).

22. **No Screens On Dangerous Guillotine Windows.** Exacerbating the cockroach infestation was an invasion of hobo spiders and other insects infiltrating the premises and created the fact many windows did not have screens. See Trial Transcript, Vol. 2, 353:2 (“*There were no screens on the windows.*”), Vol 1, 271:20, Vol.2, 372:14-20 (Q. “*Did you ever get screens on your windows?* A. *No.*”), Vol. 2, 441:6. Additionally, the windows themselves had not been maintained by Landlord, and were particularly dangerous to the Campbells’ young children. For example, Hunter Campbell, age 3, was nearly “cut-in-half” when an open window came crashing down in his bedroom. See Trial Transcript, Vol. 1, 271:3-20 (Q. [Neighbor Shane Degnan] “*...That thing just went bam. I mean it would have cut him in half. I mean there’s no question about it.*”).

23. **No Air Conditioning During Summer Months.** Not having screens was particularly problematic during the summer months because the “swamp” cooler did not function. See Trial Transcript, Vol. 1, 273:2-18 (A. [Neighbor Shane Degnan] “*Every day she [Shannon Campbell] would cry about that swamp cooler. ... She spent time at our house to cool down.*”), Vol. 2, 368:4-17, 369:12-17 (“*...it never really got fixed.*”), see also Def. Ex. 24. About the only thing the swamp cooler did regularly was leak water into the interior of 1433 Mulberry Way. See Vol. 2, 371:5-24.

24. **Violation of Salt Lake County Health Code.** Landlord’s failure to do anything to exterminate the cockroaches and other insects insider her rental property is a

violation of the Salt Lake County Health Code. See Def. Ex. 54 (Section 5.8, Section 5.9, Section 5.10 and Section 7.6 ). Likewise, Landlord's failure to furnish appliances in good repair (the dishwasher never functioned properly either) is a violation of the Salt Lake County Health Code. See Def. Ex. 54 (Section 5.12). Similarly, Landlord's failure to provide functional windows with screens is a violation of the Salt Lake County Health Code. See Def. Ex. 54, Section 5.7 (Hanging of Screens and Repair of Windows and Screens Required). Despite ample time to tender the performance required under the lease contract, Landlord failed to bring her rental property up-to-Code. This uncured material failure of consideration on the part of Landlord relieves the non-failing Campbell family from their duty of continuing to perform under the lease contract. See Def. Ex. 33, Second Salt Lake County Health Department Citation, dated May 18, 2000.

25. **Natural Gas Leak and No Hot Water.** As if all of these health and safety hazards weren't enough, there was a gas leak inside 1433 Mulberry Way shortly after the Campbell family moved-in. Fortunately, the house did not explode. However, the Campbells had to live without hot water for nearly a week. See Trial Transcript, Vol 2, 480:10-24 (Q. *"How long were you without hot water? A. "Several days. I think about five days."*). See also Def. Ex. 15, Questar Notice of Unsafe Operating Condition, dated August 28, 1998. Furthermore, the hot water heater was so decrepit and full of lint and other debris that it posed a fire hazard. It lacked a temperature gauge and the mandatory pressure relief safety valve required on all water heaters was missing. See Def. Ex. 54, Section 9.9 (*"An approved,*

*properly connected, and functioning pressure temperature relief valve shall be present on all water heaters, boilers, and other hot water apparatuses.”*); Def. Exhibit 15.

26. **No Smoke Alarms or Fire Extinguishers.** Sadly, Landlord rented 1433 Mulberry Way without smoke alarms or fire extinguishers. See Trial Transcript, Vol. 2, 441:9-14 (**Q.** “*Did you notice if there were any smoke alarms or fire extinguishers in the house when you first showed up?* **A.** *There were not.* **Q.** *Did the plaintiff ever put in any smoke alarms or fire extinguishers?* **A.** *No. We did it ourselves.”*).

27. **Electrical Wiring Not Up-To-Code.** In addition to exposed electrical wiring, there were numerous electrical switch plate protective covers missing throughout 1433 Mulberry Way, and this posed a particular danger to the young Campbell children (ages, 3, 5 and 9). See Trial Transcript, Vol. 2, 441:15-23. On one occasion, Erin Campbell (age 9) was shocked so badly she never went into the basement again. See Trial Transcript, Vol.2, 345:2-21. According to a Carter Hill, a former tenant and licensed electrician with 30 years experience, the electrical wiring was not up-to-Code. See Id., Vol. 1, 297:7, 298:1-10, 311:6-20; Vol. 2, 452:14-453:20. During trial, Landlord unconvincingly testified that prior to the first day of the lease term, Landlord actually removed every switch plate cover when she painted the entire house. See Trial Transcript, Vol. 1, 114:12-14. In fact, Landlord went so far as to claim that she replaced the electrical switch plates because they “*were not the right color.*” See Trial Transcript, Vol. 1, 118:12-23 (“*I wanted the color to be consistent with the shade of paint that I painted the walls.*”).

28. **Mrs. Campbell Tries to Contact Landlord Who is Vacationing in Europe.** After spending days cleaning the premises with her new neighbors, Shannon Campbell immediately telephoned Landlord. However, Landlord was vacationing in Copenhagen and Norway. See Trial Transcript, Vol. 1 108:19-109:3, 437:24-438:24. Mrs. Campbell also called Landlord's son in San Jose to report the cockroach infestation, sewage leak, uninhabitable basement, missing electrical switch plate safety covers, garbage, exposed electrical wiring, missing screens, inoperable swamp cooler and all of the other problems plaguing 1433 Mulberry Way. See Id., Vol. 1, 109:3-20. Mrs. Campbell called so many times, Landlord's son told Landlord that Mrs. Campbell was "*harassing*" him. See Id., Vol. 1, 110:1-19. Remarkably, Landlord denies ever having been informed of all these problems, and she claimed Mrs. Campbell was frantically calling because Shannon didn't like the color of the carpet. See Id., Vol. 1, 109:12-20. Mrs. Campbell called Landlord or her son at least 9 times between June 18 - 24, 1998 to report these hazards. See Id., Vol. 1, 110:9-19, 438:10-439:5. Eventually, Mrs. Campbell called the Health Department. See Def. Ex. 11.

29. **Mrs. Campbell Sends E-mail to Landlord re Health and Safety Hazards.** Shannon Campbell also e-mailed a list of health and safety hazards to Landlord, but Landlord did not do anything. See Addendum, Def. Exhibit 17.

30. **Mrs. Campbell Contacts Salt Lake County Health Department: 1<sup>st</sup> Inspection.** After trying unsuccessfully to get Landlord to do something about the condition of 1433 Mulberry Way, Shannon Campbell contacted the Salt Lake County Health Department. See Trial Transcript, Vol 2, 450:1-22, Def. Exhibit 16, *First* Salt Lake County Health

Department Citation to Landlord, dated September 14, 1998. An inspection was performed, and Landlord was required to bring the premises up-to-Code. However, Landlord did not remedy the health and safety code violations even though she falsely represented to the Health Department that she had done so.

31. **Landlord Relies Upon Others to Inform Her of Problems with Her Rental Properties.** Landlord does not have first-hand knowledge of the condition of her rental property, and Landlord's testimony on this crucial issue is pure speculation. See Vol. 1, 102-104. Landlord spent much of her time traveling Europe.

32. **Landlord Promises to Bring Premises Up-To-Code.** Before presenting the Campbells with another lease contract, Landlord promised to remedy all of the Salt Lake County Health Code violations. Mrs. Campbell provided Landlord with a list of all of the items that needed to be repaired, and Landlord promised that these items would be brought up-to-Code, including making the basement habitable (*i.e.*, finishing the "*fixups/improvements in progress*" advertised in the newspaper). See Trial Transcript, Vol. 2, 462:22-471:8. The Campbells expected their home to be brought up-to-Code, and it should have been done by Landlord. See *Id.*, Vol. 2, 477:4-12 (Q. "*Did you expect her to bring that house up to Code?* A. *Yes.*"). However, Landlord never made good on her promises despite having nearly a year to tender the performance required under the lease contract. See Trial Transcript, Vol. 2, 472:11-23.

33. **Mrs. Campbell Contacts Salt Lake County Health Department: 2<sup>nd</sup> Inspection.** After giving Landlord more than 10 months to perform and bring the premises up-

to-Code, Shannon Campbell contacted the Salt Lake County Health Department a second time because nothing was ever remedied. See Trial Transcript, Vol. 2, 473:2-16. A Health Inspector inspected 1433 Mulberry Way, confirmed (for a *second* time), that the premises were not up-to-Code. Another citation was issued to Landlord. See Def. Exhibit 33, ***Second*** Salt Lake County Health Inspection Citation to Landlord, dated May 18, 2000. Once again, Landlord did nothing, and so the Campbells moved-out one month prior to expiration of the lease term. See Trial Transcript, Vol. 2, 475:20-24 (A. “*Well, we gave her a couple of more weeks to respond, and we didn’t hear anything from her, so we moved.*”). Landlord’s “uncured material breach” of the renewal lease agreement relieves the non-breaching Campbell family of any obligation to continue performing their contractual obligations.

34.     **The Campbells Took Excellent Care of 1433 Mulberry Way.** All of the neighbors agree that the premises never looked better than when it was occupied by the Campbell family. See Trial Transcript, Vol. 1, 246:8-24 (A. [Neighbor Bonnie Sackett] “*...the nicest I saw the house look after our friends owning it many years ago was when the Campbells moved in.*” A. *They took care the best of anybody who had ever been there.* Q. *Ever?* A. *Yes. Yes.*”).

35.     **Landlord Boasts That She Maintains “Very Close Relationships” With Her Tenants Because She Is Such a Fantastic Landlord.** Landlord testified in deposition her tenants would send her letters stating Landlord “was the best landlord they’ve ever had.” See Trial Transcript, Vol. 1, 157:20-25 (Q. “*Do you remember telling me that?*” A. *Yes, I have.* Q. *You have those letters?* A. *I didn’t bring them with me.* Q. *But you have them, right?* A.



*I do have them, yes.”*). These letters were sought during discovery. Not surprisingly, Landlord never produced them. In reality, Landlord has an extensive track record of evicting her tenants. In nearly all of these cases, tenants attempted to withhold rent because Landlord’s rental properties were so run-down and Landlord failed to make necessary repairs despite her repeated promises to do so. Landlord has filed a lawsuit each and every year since 1989. See Trial Transcript, Vol. 1, 155:9-158:25.

36. **Landlord Claims She Replaced \$1,000 Worth of Carpeting Because Shannon Campbell Did Not Like the Color.** Landlord continues her “incredulous” testimony by claiming she replaced all of the carpeting because Shannon Campbell did not like the color. See Trial Transcript, Vol. 1, 153:14-22.

37. **After the Campbells Move-Out, Landlord Advertises 1433 Mulberry Way as a 3-Bedroom House.** Acknowledging that the basement of the house was uninhabitable, Landlord advertised 1433 Mulberry Way as a 3-bedroom house after the Campbell family moved-out. See Trial Transcript, Vol. 1, 130:2-4, 131:19-132:14, Def. Exhibit 39, Landlord’s newspaper advertisement, July 2000.

38. **Lawsuit Filed After Salt Lake County Health Department Inspector Confirms 1433 Mulberry Way is Not Up-To-Code.** The list of Salt Lake County Health Code Regulations violated by Landlord is extensive. Not only were most of these health and safety code violations present on the first day of the lease term, but Landlord, despite considerable opportunity to remedy this long list of hazards, nevertheless failed to comply with her obligation to bring 1433 Mulberry Way up-to-Code. As a result of Landlord’s failure to remedy these

health and safety code violations, and after having the Salt Lake County Health Department confirm the premises were not up-to-Code (after the second inspection of the premises), the Campbell family moved-out in April 2000 with only one (1) month left on the lease term. See Def. Ex. 33, Second Salt Lake County Health Inspection Citation, dated May 18, 2000.

39. **Landlord Unnecessarily Increases Litigation Costs.** Landlord and her attorney sought to needlessly increase the cost of litigation. The following is just one example:

Q. Are there any other documents that haven't been produced to me yet that would be relevant to this litigation?

A. I don't think so.

Q. You think we have everything?

A. I think *we* have everything, but I thought I had everything the last time I produced the documents. So *if something turns up, you'll be the first to know.*

MR. ROUNDY: Photographs?

A. I do have photographs that were in those files, but *they must have slipped out when I grabbed those files, because I don't have them with me.*

THE WITNESS: Didn't you make copies of those photographs and provide copies?

MR. ROUNDY: I couldn't see them.

Q. Did you produce photographs to your attorney prior to today?

A. I thought I did, but if he can't find them, I guess I didn't.

Q. *Maybe they got lost?*

A. No, I have them.

Q. You still have them in your possession?

A. Not with me in this room, but I have – they must have – as I say, *when I grabbed the files they must have fallen out, so they must be at my house.*

Q. Any other documents that would be noteworthy?

A. Not that I – I'm not intentionally not providing documents. *If I run across something, I'll give it to Mr. Roundy, and I'm sure he'll pass it on to you.*

Q. I'm sure he will.

See Depo. of Landlord, 33:15-34:3; 34:21-36:15, Motion to Compel, Exhibit K.

40. Landlord's Testimony "Incredulous". "*Her testimony to the Court was incredulous that she could perform that much work in the cleaning up of the premises.*". See Trial Transcript, Vol. 2, 566:1-3.

## **ARGUMENT**

### **I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DETERMINED LANDLORD WAS NOT THE PREVAILING PARTY.**

#### **A. Landlord Cannot Be The Prevailing Party As A Matter Of Law Because Landlord Failed To Establish A Prima Facie Case For Breach Of Contract.**

Landlord argues she is entitled to receive attorney fees simply because there is a provision in the lease agreement providing for an award of fees to the prevailing party, and Landlord received a net judgment of \$207.37. See Brief of Appellant, p.13. At trial, however, Landlord completely failed to present any evidence that she had performed her obligations under the lease contract. Under the Utah Fit Premises Act, Landlord was required to lease premises that were habitable, and in compliance with the Salt Lake County Health Code. See Utah Code Ann. § 57-22-3(1). The trial record is completely devoid of any evidence 1433 Mulberry Way was both habitable **and up-to-Code** when it was leased to the Campbell family. This failure of consideration is fatal to Landlord's claim. Therefore, Landlord cannot be the prevailing party as a matter of law because there is no evidence supporting an essential element of Landlord's breach of contract claim.

Initially, a lease was considered an interest in property under common law. Leases were similar to ownership for a term, and the duties of maintenance, repair and improvements were traditionally placed upon tenants. See, e.g., Richard Barton Enterprises,

Inc. v. Tsern, 928 P.2d 368 (Utah 1996). Eventually, the common law developed and courts began analyzing leases under principles of contract law. See, e.g., Reid v. Mutual of Omaha Ins. Co., 776 P.2d 896 (Utah 1989) (The trend rule is that leases are essentially commercial transactions, and are contractual in nature). In accord with the modern trend, Utah courts have consistently held that leases should be governed by principles of contract law.

Before Landlord may claim to be the prevailing party, the issue concerning Landlord's failure to establish a prima facie case for breach of contract should be addressed. At trial, Landlord was required to make out a prima facie case for breach of contract by providing at least some evidence supporting each element of Landlord's claim. "A prima facie case has been made when evidence has been received at trial that, in the absence of contrary evidence, would entitle the party having the burden of proof to judgment as a matter of law." Bair v. Axiom Design, LLC, 2001 UT 20 at ¶14, 20 P.3d 388, 392 (citing State v. Wood, 268 P.2d 998, 1001 (Utah 1954)). Dismissal is appropriate if a prima facie case is not established.

"[T]he determination of whether a party has made out a prima facie case is a question of law which we review for correctness, affording no deference to the trial court's judgment." Id. at ¶13. Furthermore, "the evidence and all inferences that fairly and reasonably might be drawn therefrom must be viewed in a light most favorable to the judgment entered." Nielsen v. Wang, 613 P.2d 512, 514 (Utah 1980) (citations omitted). Finally, "[t]he findings and conclusions of the District Court must be affirmed unless there is no reasonable basis in the evidence to support them." Id. (citations omitted). In the instant case, the evidence presented during Landlord's case-in-chief failed to establish a prima facie case for breach of contract.

“The elements of a prima facie case for breach of contract are (1) a contract, (2) **performance by the party seeking recovery**, (3) breach of the contract by the other party, and (4) damages.” Bair, 2001 UT 20 at ¶14 (emphasis added) (citing Nuttall v. Berntson, 30 P.2d 738, 741 (Utah 1934)). “The rule in Utah is that to recover on [a] contract, a [Landlord] must first establish [her] own performance o[r] a valid excuse for [her] failure to perform.” Nielsen, 613 P.2d at 514 (awarding attorney fees to defendants as prevailing party because plaintiff contractor failed to establish that he performed his obligations under the contract).

The Campbells’ Motion For Directed Verdict should have been granted at the close of Landlord’s case-in-chief.<sup>3</sup> “We review a directed verdict under the same standard employed by the trial court.” Lee v. Langley, 2005 UT App 339 at ¶7 (quoting Carlson Distributing Co. v. Salt Lake Brewing Co., LC, 2004 UT 227 at ¶13, 95 P.3d 1171). “A directed verdict is appropriate ‘only if, examining all evidence in a light most favorable to the non-moving party, there is no competent evidence that would support a verdict in the non-moving party’s favor.’” Id. (quoting Five F, LLC v. Heritage Sav. Bank, 2003 UT App 373 at ¶12, 81 P.3d 105).

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<sup>3</sup> A motion for a directed verdict under Rule 50(a) contemplates jury trials. See Wessel v. Erickson Landscaping Co., 711 P.2d 250, 252 (Utah 1985). In a bench trial, a motion for directed verdict is really a motion for involuntary dismissal under Utah R.Civ.P. 41(b). Utah appellate courts treat a motion for directed verdict made during a bench trial as a motion for involuntary dismissal because “it is the substance, not the labeling, of a motion that is dispositive in determining the character of the motion.” Watkiss & Campbell v. Foa & Son, 808 P.2d 1061, 1064 (Utah 1991) (stating that an incorrect title placed upon a pleading is not a bar to a party’s case); Gallardo v. Bolinder, 800 P.2d 816, 817 (Utah 1990) (same).

Reviewing the trial court record, there is not a shred of evidence supporting the second element necessary to establish a prima facie case for breach of contract (“performance by the party seeking recovery”). Because Landlord presented no evidence on this key point, no evidentiary inferences can be made which can reasonably be construed in favor of the judgment entered. There is simply no evidence to support any judgment in favor of Landlord, much less one awarding attorney fees. On the contrary, considerable evidence exists showing Landlord did not tender the performance required under the lease contract. Landlord did not lease 1433 Mulberry Way in a condition that was both habitable **and in compliance with the Salt Lake County Health Code**. See Utah Code Ann. § 57-22-3(1).

However, the Campbells did not have the burden of proving Landlord’s contractual breach. It was the responsibility of Landlord to provide at least some evidence during her case-in-chief showing performance of her obligations under the lease contract. See, e.g., Bair, 2001 UT 20 at ¶14 (“performance by the party seeking recovery” is necessary element of breach of contract claim); see also Nielsen, 613 P.2d at 514 (“The rule in Utah is that to recover on [a] contract, a [Landlord] must first establish [her] own performance o[r] a valid excuse for [her] failure to perform.”). Landlord didn’t come close to meeting her evidentiary burden at trial because she never attempted to offer evidence on this key element.

Nevertheless, the Campbells presented a significant amount of evidence from neighbors, a former tenant who is a licensed electrician with nearly 30 years of experience, and the Salt Lake County Health Inspector himself. All of this evidence was uncontradicted by Landlord at trial, and the evidence overwhelmingly demonstrated Landlord’s own breach of the

lease contract. Landlord was the cause of her own alleged damages, and therefore, Landlord is not entitled to recover from the Campbells.

Rule 41(b) of the *Utah Rules of Civil Procedure* provides in pertinent part:

After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that **upon the facts and the law the plaintiff has shown no right to relief**.

Utah R.Civ.P. 41(b) (emphasis added).

Although Landlord established the existence of a valid lease agreement, and “incredulous” testimony was received concerning Landlord’s alleged damages, Landlord failed to present any evidence demonstrating she performed her obligations under the lease contract. By pointing-out to the trial court (at the conclusion of Landlord’s case-in-chief, and again at the start of the second day of trial), that Landlord did not present any evidence in support of a necessary element of her breach of contract claim, the Campbells satisfied their burden of demonstrating Landlord failed to establish a “right to relief” under the facts and law existing at the close of Landlord’s case-in-chief.

Presumably, the reason Landlord ignored this essential element of her case is because Landlord could not possibly prove 1433 Mulberry Way was in compliance with the Salt Lake County Health Code. Landlord’s claim is frivolous because it clearly had no legal basis for recovery. The *two* Health Department citations issued to Landlord (one at the beginning of the lease term, and the other at the end of the lease term) confirm 1433 Mulberry Way was never up-to-Code. This failure of consideration rendered the lease contract unenforceable, and

relieved the Campbells of their duty to continue performing under the contract. Aquagen International, Inc. v. Calrae Trust, 972 P.2d 411 (Utah 1998) (failure of buyer to make payments to developer rendered contract unenforceable for failure of consideration).

**B. Landlord Cannot Be The Prevailing Party As A Matter Of Law Because Landlord Was Responsible For Causing A Failure Of Consideration Rendering The Lease Contract Unenforceable.**

The party seeking recovery must present at least some evidence showing they performed their obligations under the contract before the other party can be compelled to perform their contractual obligations. See, e.g., Bair, 2001 UT 20. In Aquagen, for example, the defendant developed a formula whereby oxygen could be stabilized in water. Defendant entered into a contract transferring rights to the formula to an officer of the parent company of plaintiff Aquagen International, Inc. Defendant was to be paid \$250,000 under the contract. However, Aquagen failed to pay any money to defendant, and defendant refused to continue performing his contractual obligations as well. Ironically, Aquagen sued defendant for breach of contract even though Aquagen had failed to do the one thing required under the contract; pay the purchase price for using the formula developed by defendant.

The instant case is very similar to Aquagen. Here, Landlord failed to perform the most important part of any residential lease contract; delivering a safe, sanitary and habitable rental unit that is in compliance with the local health and safety code. The Utah Fit Premises Act demands this from every residential landlord in Utah. See Utah Code Ann. § 57-22-3(1). Despite failing to do the one thing required of her, Landlord now takes the remarkable position that the Campbell family should pay rent for the last month of the lease term. However, the



Campbells moved-out one month early precisely because Landlord failed to live up to her end of the contract. Landlord should not now be heard to complain of non-payment of rent because the only cause of the current state of affairs in Landlord's complete failure to what was required of her in the first place. Moreover, Landlord also seeks to force the Campbells to pay money to remedy all of the health and safety code violations created by Landlord's failure to regularly maintain her Utah rental properties. This Court should not allow Landlord to succeed in her unlawful endeavor.

In Aquagen, the Utah Supreme Court determined that a valid contract had been formed because there was sufficient consideration. There was a promise to pay \$250,000 in exchange for the assignment of defendant's formula, and a promise not-to-compete. However, the Court also found that there had been a failure of consideration because no payments had ever been made to defendant under the terms of the contract. Because "[plaintiff] has failed to perform the only obligation required of him in the contract, we hold that he committed an 'uncured material failure' sufficient to render the contract unenforceable for failure of consideration." Aquagen, 972 P.2d at 414 (ruling that contract is unenforceable because *"performance cannot be compelled when the non-failing party to a contract fails to receive that which has been bargained for."*). The same result should be reached in the instant case.

Landlord is solely responsible for her alleged damages. The Campbells paid rent, and they testified that they expected to receive 1433 Mulberry Way in a condition that was safe for their three young children, sanitary, habitable **and in compliance with health and safety codes**. Every tenant expects this to be the case, and Utah law implies these terms into every

residential lease contract. Landlord is responsible for 1433 Mulberry Way not being up-to-Code on the first day of the lease term (June 15, 1998). Likewise, Landlord is responsible for the premises not being up-to-Code when Shannon Campbell contacted the Salt Lake County Health Department a *second* time. Landlord’s failure to do what any decent human being would do is shocking, and should hopefully compel this Court to rule enter judgment in favor of the Campbell family. Unfortunately, the trial court never addressed the requirement contained in the Utah Fit Premises Act requiring the premises be habitable **and up-to-Code**. See Utah Code Ann. § 57-22-3(1).

“[W]here the statutory language is plain and unambiguous, we do not look beyond the language’s plain meaning to divine legislative intent.” Nunez v. Albo, 2002 UT App 247 (citing Lyon v. Burton, 2000 UT 19 at ¶17, 5 P.3d 616 (quotations and citations omitted)). Furthermore, “[q]uestions of statutory interpretation are . . . questions of law that are reviewed ‘for correctness, giving no deference to the district court’s interpretation.’” Pearson v. Lamb, 2005 UT App 383 (quoting Board of Educ. v. Sandy City Corp., 2004 UT 37 at ¶8, 94 P.3d 234).

With passage of the Utah Fit Premises Act, the intent of the Utah legislature is clear: Landlords “shall maintain” their rental properties “in a condition fit for human habitation **and in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the residential rental unit is located**.” See Utah Code Ann. § 57-22-3(1) (emphasis added). There is a strong public policy in favor of requiring those who benefit financially from leasing rental property to require that all of their rental properties

comply with health and safety codes. Society as a whole benefits from such a policy, and ruling in favor of the Campbell family will further this public policy and hopefully ensure that another young family will not have to go through what the Campbell family experienced at 1433 Mulberry Way.

Landlords who fail to comply with their obligations under the Utah Fit Premises Act endanger the health and safety of residents who do not own their own home. Landlords who fail to rent safe, decent housing should be held accountable; particularly where three young children are placed at risk of electric shock, disease and other serious physical and emotional injury. It is truly disappointing when property owners like Landlord don't seem to care much about the health, safety and well-being of their tenants. This Court should continue developing the common law for the protection and safety of all Utah tenants, and enter judgment in favor of the Campbell family.

Recognizing the importance of ensuring that only safe and decent housing is made available to citizens who rent their homes, the Utah Supreme Court formally recognized an implied warranty of habitability applicable to every residential lease agreement. See Wade v. Job, 818 P.2d 1006 (Utah 1991); P.H. Investment v. Oliver, 818 P.2d 1018 (Utah 1991). These cases marked an important first step in this jurisdiction toward ensuring decent housing for tenants. At around the same time these two cases were decided, the Utah Fit Premises Act went into effect. Building upon the common law foundation of Wade, the Utah legislature codified additional protections guaranteeing tenants the right to live in housing free from health and safety hazards. Not only did the Utah Fit Premises Act codify the implied warranty of

habitability recognized in Wade, but the law granted additional protections to tenants who are often at the mercy of landlords.

The instant case is the first case in this jurisdiction interpreting language contained in the Utah Fit Premises Act. Basic human decency, and principles of fundamental fairness and good conscience demand of landlords strict compliance with the strong public policy recognized in Wade, and legislatively expanded by the Utah legislature. The Campbells believe the time to act is now. Now is the time to take the next step in the advancement of Utah jurisprudence so the citizens in our community can be assured decent rental housing. The antiquated notion of *caveat emptor* is fundamentally at odds with the modern laws and public policy of this State, and this Court should resoundingly proclaim to all landlords that rental property can no longer be leased “as is.”

C. Landlord And Her Attorney Should Not Be Rewarded With Attorney Fees Under These Circumstances Because Landlord Has Engaged In A Pattern Of Discovery Abuse Designed To Unnecessarily Increase Litigation Costs.

A trial court’s decision determining the existence of a prevailing party is discretionary. See, e.g., R.T. Nielson Company v. Cook, 2002 UT 11, 40 P.3d 1119. However, Landlord never addresses the abuse of discretion standard in her opening brief because it would require Landlord to reveal the underlying reasons why the trial court denied Landlord the relief she now seeks in this venue. Having dealt with this \$207 case for nearly 5 years, Judge Iwasaki was not about to reward Landlord and her attorney with reimbursement for years of discovery abuse perpetrated against the Campbell family. Reviewing the extensive list of cost-increasing

tactics and other discovery shenanigans detailed in the Motion To Compel filed by the Campbells, one understands more clearly the circumstances surrounding the trial court's refusal to rule Landlord was the prevailing party under the lease contract. See Motion To Compel, dated July 18, 2003. The trial court did not abuse its discretion when it denied Landlord's request for attorney fees, and this Court should not reward Landlord's misconduct either.

To the extent the trial court's decision finding no prevailing party was based upon the erroneous decision denying the Campbells' Motion For Directed Verdict, the trial court's decision was an abuse of discretion. The trial court stated: "because neither side has prevailed in this matter to the court's satisfaction as to a prevailing party, neither side [is] entitled to attorney's fees." See Trial Court Transcript, Vol 2, 567:23-25. However, the Campbells are the prevailing party because their Motion for Directed Verdict should have been granted.

As explained above, Landlord cannot be the prevailing party as a matter of law because Landlord failed to establish a prima facie case for breach of contract. Landlord's failure to present any evidence demonstrating performance of her obligations under lease contract is a failure of consideration rendering the contract unenforceable. Because the Campbells were entitled to have Landlord's breach of contract claim summarily dismissed at the conclusion of Landlord's case-in-chief, the Campbells are the prevailing party as a matter of law. Consequently, if the Campbells prevail on the issue regarding denial of their Motion for Directed Verdict, this case should be remanded with instructions to the trial court that attorney fees should be awarded to the Campbells as the prevailing party.

D. Assuming *Arguendo* That The Campbells Are Unsuccessful In Their Claim The Trial Court Erred When It Denied Their Motion For Directed Verdict, The Trial Court's Decision Finding That There Was No Prevailing Party Was Nevertheless A Proper Exercise Of Discretion.

Landlord argues the trial court erred in determining there was not a prevailing party. The sole basis underlying Landlord's claim is that Landlord received a judgment of \$207.37 after 5 years of litigation. Landlord cites two cases in an attempt to support her position. Neither citation is to a Utah case, and neither case is persuasive.<sup>4</sup> Noticeably absent from Landlord's brief is any mention of relevant cases from this jurisdiction. Moreover, Landlord analyzes this issue under an incorrect standard of review.<sup>5</sup> Fortunately, this issue has been settled within our jurisdiction, and the law in this area has been recently upheld by the Utah Supreme Court:

Which party is the prevailing party is an appropriate question for the trial court. This question depends, to a large measure, on the context of each case, and, therefore it is appropriate to leave this determination to the sound discretion of the trial court. **We therefore review the trial court's determination as to who was the prevailing party under an abuse of discretion standard.**

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Hines v. Perez, 242, F.2d 459 at 466 (CA9 1959). This case involved a dispute between two companies located in Guam, and no part of this decision contradicts the Campbells' argument. The second case cited by Landlord is Trollope v. Koener, 515 P.2d 340 (Ariz. App. 1973). This case merely affirmed the *Arizona* rule of "net judgement" in its determination of the prevailing party.

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Landlord fails to state the appropriate standard of review in her brief. Landlord would like this Court to believe this issue is a question of law reviewed for correctness. Not so. A trial court's determination of whether a prevailing party exists is reviewed under an abuse of discretion standard.

R.T. Nielson Co. v. Cook, 2002 UT 11, 40 P.3d 1119 (emphasis added).<sup>6</sup>

In R.T. Nielson Co., the Utah Supreme Court determined that the trial court was in the best position to identify a prevailing party. Circumstances can exist where one party, two parties, or neither party prevails. See Id. During the two day bench trial in the instant case, Judge Iwasaki was responsible for determining both factual and legal matters. As the person charged with this duty, Judge Iwasaki was able to view all of the circumstances relevant to this case, and he was the only person who could determine whether there was a prevailing party.

After reviewing all of the facts, and after having been intimately aware of the equities of this case for quite some time, the trial court determined that neither party prevailed to the court's satisfaction. See Trial Transcript, Vol. 2, 567:22-25. Given the long history of discovery abuse perpetrated by Landlord, and her attorney, Judge Iwasaki's decision was clearly not an abuse of discretion. However, as this decision relates to the Campbells, the trial court's decision is an abuse of discretion to the extent that determination was influenced by the denial of the Campbells' Motion for Directed Verdict.

Following its determination that neither party had prevailed, the trial court determined that an equitable offset was the appropriate remedy in this matter and that Landlord should receive \$207.37. Landlord uses this pittance of an award to justify her claim she was

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<sup>6</sup> The R.T. Nielson Co. case provides guidance to trial courts including, but not limited to: (1) contractual language (2) the number of claims, counterclaims, cross-claims, etc. brought by the parties brought by the parties, (3) the importance of claims relative to each other and their significance in the context of the lawsuit considered as a whole, and (4) the dollar amounts attached to and awarded in connection with various claims.

the prevailing party. However, Landlord's claim is not supported by Utah law. For example, in Carlson Distributing Co. v. Salt Lake Brewing Co., LC, 2004 UT App 227, 95 P.3d 1171, a party was awarded net judgment in the amount of \$273,000.00. Despite receiving a substantial judgment, the trial court nevertheless determined that neither party was the prevailing party. On appeal, this Court upheld the determination made by the trial court. See Id. at ¶44.

If this Court ultimately determines that it was appropriate for the trial court to deny the Motion For Directed Verdict, matters within the sound discretion of the trial court concerning the absence of a prevailing party should not be disturbed. See, e.g., Nielsen, 613 P.2d at 515 (citing Swain v. Salt Lake Real Estate & Investment Co., 279 P.2d 709 (Utah 1955); Downey State Bank v. Major-Blakeney Corp., 556 P.2d 1273 (Utah 1976)). However, the result in the instant case should not be the same result as Carlson because the Campbells defeated the only claim filed by Landlord. By pointing-out that there was a complete failure of proof on an essential element of Landlord's breach of contract claim, the trial court should have dismissed Landlord's claim as a matter of law. Therefore, if this Court determines the trial court should have dismissed this case at the conclusion of Landlord's case-in-chief, judgment should be entered in favor of the Campbells, and fees awarded to the Campbells as the prevailing party.

**II. THE ADMISSION OF EVIDENCE EXPLAINING KEY TERMS CONTAINED IN THE LEASE CONTRACT WAS A PROPER USE OF THE TRIAL COURT'S DISCRETION.**

"Trial courts are afforded broad discretion in determining the admissibility of evidence; thus we will not disturb a trial court's ruling whether to admit or exclude evidence



absent an abuse of discretion.” Lee v. Langley, 2005 UT App 339 at ¶9 (quoting Vigil v. Division of Child & Family Servs., 2005 UT App 43 at ¶8, 107 P.3d 716).

A. The Trial Court Properly Admitted Evidence Concerning The Condition Of 1433 Mulberry Way Because The Condition Of The Premises Was The Central Issue At Trial.

Landlord’s argues the trial court erred in admitting “parol evidence” concerning the condition of the premises leased to the Campbell family. Landlord wants this Court to ignore the actual condition of 1433 Mulberry Way and focus instead solely upon the boilerplate notice acceptance provision in the lease agreement stating the premises were in good repair. Landlord wants this Court to ignore reality.

The trial court did not err in deciding to admit evidence concerning the condition of 1433 Mulberry Way because this evidence was necessary for the trial court to resolve the sole issue necessitating trial in the first place (*i.e.*, what was the condition of the premises?). The trial court’s decision was consistent with Utah law. See, e.g., FMA Financial Corp. v. Hansen Dairy, Inc., 617 P.2d 327, 329 (Utah 1980) (the parole evidence rule does not “prevent proof that a party did not perform an obligation” under a contract, even if that obligation was not put in writing). The FMA case is directly on-point.

In FMA, the plaintiff leasing company (“FMA”) sued the defendant dairy farmers (“Hansen”) for breach of a written agreement for the lease of a corn silo and other farm equipment. The FMA contract contained an “acceptance notice” provision stating that the “items received by [Hansen] were and are in good order and condition and acceptable to

[Hansen] as delivered or installed.” Id. at 328. However, the corn silo was still located in Nevada at the time the contract was signed. The boilerplate acceptance notice provision in the FMA contract is exactly like the acceptance notice paragraph contained in Landlord’s residential lease contract with the Campbells (“TENANT has examined the premises and is satisfied with the physical condition thereof. . . premises [are] in good order and repair.”).

The FMA trial court found Hansen executed the written contract with FMA, and that Hansen was obligated to make lease payments to FMA for delivery of a corn silo and other farm equipment. See Id. The FMA trial court also concluded Hansen executed the lease contract “on the condition that the silo would ‘be erected and operational by corn harvest time.’ i.e., about the end of the first week in September, 1973.” Id. at 329. The FMA trial court made this finding even though the written contract did not contain this term.

The FMA trial court made this finding after listening to testimony introduced by Hansen over the objections of FMA. Like Landlord, FMA argued the lease agreement was “integrated, clear, definite, and unambiguous” and Hansen’s “attempt to incorporate the requirement that the silo was to be installed by corn harvest time into the agreement violates the parole evidence rule.” Id. This is the exact same argument Landlord unsuccessfully made to the trial court in the instant case. The FMA trial court correctly admitted the evidence over FMA’s objections. In so concluding, the Utah Supreme Court stated:

There was ample basis in the testimony of the defendants Stephen L. Hansen, Val Jean Hansen and Larell Hansen upon which the trial court could make its findings that the lease was negotiated and executed upon the understanding that the defendants were to make the lease payments on the condition that the silo

would be installed and operational by corn harvest time. Accordingly, the plaintiff's attack thereon must fail.

FMA, 671 P.2d at 330.

In the instant case, Landlord is making an identical argument, and like the plaintiff in FMA, Landlord's argument must likewise fail. Landlord fails to acknowledge the Utah Fit Premises Act automatically adds contract terms to every residential lease agreement in Utah. See Utah Code Ann. § 57-22-3(1). These implied contract terms require, *inter alia*, that Landlord tender residential premises: (1) "*in a condition fit for human habitation*" **and** (2) "*in accordance with local ordinances and the rules of the board of health.*"

Each owner and his agent **renting or leasing a residential unit shall maintain that unit [1] in a condition fit for human habitation and [2] in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the residential rental unit is located.** Each residential rental unit shall have electrical systems, heating, plumbing, and hot and cold water.

See Utah Code Ann. § 57-22-3(1) (emphasis added).

As 1433 Mulberry Way is located within Salt Lake County, the Salt Lake County Health Code places an affirmative duty upon every landlord, and makes it unlawful to lease a residential rental unit not in compliance with the Health Code:

5.1 Occupying or Letting of Unfit Dwelling or Dwelling Unit Unlawful.

No owner, occupant, lessee, or any other person **shall occupy, let to another person, or permit occupancy of any dwelling or dwelling unit unless it and the premises are safe, clean, sanitary, in good repair, fit for human occupancy, and in compliance with these regulations and all other appropriate legal requirements.**

See Def. Exhibit 54, Salt Lake Health Code, Section 5.1.

As part of Landlord's case-in-chief, Landlord was required to prove she complied with all of her obligations under the Utah Fit Premises Act, and the Salt Lake County Health Code. Landlord's complete failure to present any evidence showing she tendered this required performance is fatal to Landlord's breach of contract claim. Landlord's claim that it was error for the trial court to admit evidence regarding the condition of 1433 Mulberry Way is nonsense. Admitting evidence concerning the condition of the premises in no way contradicts the express terms of the lease agreement. This evidence was essential for the trial court to perform its job of resolving the dispute of fact regarding the condition of the premises. More importantly, **the *satisfactory condition* of a residential rental unit is always an express term of every residential lease contract in Utah.** See, e.g., Utah Code Ann. § 57-22-3(1); Wade v. Job, 818 P.2d 1006 (Utah 1991); P.H. Investment v. Oliver, 818 P.2d 1018 (Utah 1991); Def. Exhibit 54. The holding of this case should explicitly confirm this strong public policy.

Receiving this evidence was necessary because there was no other way to determine if the Utah Fit Premises Act contract terms were satisfied by Landlord. Furthermore, this evidence was admitted for the purpose of showing Landlord failed to tender the consideration required under the lease agreement. Consequently, Landlord's claim that a second trial should be granted because there were alleged "errors" in the admission of evidence, and these errors somehow created bias and prejudice in the trial court, must fail. Landlord's "parole evidence" argument is contrary to Utah law. See FMA, 617 P.2d 327.

The trial court's decision is even more compelling given the fact that the Utah Fit Premises Act **requires** every owner of residential property to lease premises only after the conditions set forth in Utah Code Ann. § 57-22-3(1) are satisfied (*i.e.*, the premises are: (1) “*in a condition fit for human habitation*” **and** (2) “*in accordance with local ordinances and the rules of the board of health.*” See Utah Code Ann. § 57-22-3(1). There was no similar statute in FMA requiring FMA erect a corn silo before harvest time. In FMA, the condition regarding the date the corn silo was to be erected was found by the trial court to have existed after hearing testimony from the Hansens only. In allowing the admission of testimony explaining terms not contained in the written contract, the Utah Supreme Court found such testimony was not inadmissible parole evidence. The parole evidence rule “*should not be applied with any such unreasoning rigidity as to defeat what may be shown to be the actual purpose and intent of the parties, but should be applied in the light of reason to serve the ends of justice.*” FMA, 617 P.2d at 329 (emphasis added). Judge Iwasaki's decision was not an abuse of discretion.

The *two* citations from the Health Department, e-mail and other correspondence between Landlord and the Campbells showing that the premises were dangerously not up-to-Code, the testimony of two neighbors, and testimony from Klaus and Shannon Campbell, were all necessary to determine if the contract terms implied in every residential lease agreement by the Utah Fit Premises Act were in fact satisfied by Landlord. This evidence did not contradict the terms of the residential lease contract. This evidence was necessary to resolve questions concerning a term in the lease regarding the condition of 1433 Mulberry Way.

Despite receiving all of this evidence, the trial court should have gone one step further and ruled consistently with FMA by finding there was a **failure of consideration**. Landlord clearly did not lease 1433 Mulberry Way in a condition that was “in accordance with local ordinances and the rules of the board of health.” See Utah Code Ann. § 57-22-3(1). Nevertheless, the trial court acted within its discretion when it admitted this evidence. There was no error in the admission of evidence proving the *actual* condition the premises.

B. The Trial Court’s Decision To Admit Evidence Necessary To Understand The Facts Of This Case Was Consistent With Substantial Justice.

Landlord claims the introduction of this evidence created a bias on the part of the trial court, leading to an improper conclusion. However, absent from her brief is any claim Landlord’s substantial rights were affected. Landlord’s accusations concerning the trial court’s decision to hear evidence necessary to resolve the only issue at trial (*i.e.*, the condition of 1433 Mulberry Way) somehow created bias and prejudice is simply not grounds for granting a new trial. To the extent Landlord’s rights were affected, they were affected by **Landlord’s own failure of proof**, and not by any alleged error of the trial court.

The trial court heard two days of testimony and received considerable evidence concerning the run-down, and at times, “unbearable” living conditions within 1433 Mulberry Way.<sup>7</sup> The trial court’s decision certainly appears to be consistent with substantial justice

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<sup>7</sup> As the Campbells point-out in their post-trial motions, 1433 Mulberry was clearly not up-to-Code as required by the Utah Fit Premises Act. So, even if the premises were “habitable,” the trial court should nevertheless have entered findings regarding the undisputed fact the premises were not “*in accordance with local ordinances and the rules*

because it was quite obvious at trial that Landlord is an absentee property owner from San Francisco who has better things to do with her retirement time than attend to her decrepit investment properties in Utah. Landlord would rather holiday in Europe than take time out of her busy retirement days to provide even the most basic and humane living conditions for a house sheltering a family with 3 young children. This Court should not sanction Landlord's behavior; particularly where the explicit public policy behind the Utah Fit Premises Act makes abundantly clear that the Utah legislature does not tolerate Landlords renting unsafe and unfit homes to Utah citizens.

The trial court's decision was clearly not the result of bias or prejudice. The trial court's decision was obviously made after listening to the "incredulous" testimony of Landlord and her landlord friends, and making factual determinations based upon evidence properly admitted within the sound discretion of the trial court. For Landlord to now claim the trial court committed an error by not admitting invoices allegedly drafted by her handyman, Gus Dixon, is remarkable. Landlord failed to provide any foundation whatsoever to get these document admitted into evidence. **It was Landlord's mistake in proving damages, not any error by the trial court, that resulted in Landlord's failure to meet her evidentiary burden at trial.** Landlord should not now be heard to complain of her own negligence. All of the other evidence presented at trial was more than adequate to support the trial court's decision to admit this evidence, and the trial court's decision is consistent with substantial justice.

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*of the board of health."* See Utah Code Ann. § 57-22-3(1).

There is no dispute Landlord was **required** by law to tender premises that were up-to-Code. See Utah Code Ann. § 57-22-3(1). Therefore, because Utah law makes clear that it is unlawful for landlords to lease rental property in violation of the Health Code, **Landlord could not tender the performance required under the lease agreement even if she wanted to do so.** Presumably, this is the reason Landlord failed to present any evidence on this issue during her case-in-chief.

Landlord's failure to present any evidence in support of this necessary element of her breach of contract claim excuses the Campbells' obligation to continue performing under the lease contract. This failure of consideration bars Landlord's contract claim as a matter of law. See FMA Financial Corp. v. Hansen Dairy, Inc., 617 P.2d 327, 330 (Utah 1980) (upholding trial court's "conclusion that there had been a failure to furnish the agreed consideration by the plaintiff and that therefore, the defendants were not bound to continue making payments on the contract" even though there was no written contract term requiring that the silo be constructed before harvest time).

The trial court's decision to receive testimony from Bonnie Sackett (real estate agent and neighbor), Shane Degnan (neighbors), Carter Hill (licensed electrician who lived in 1433 Mulberry Way just prior to the Campbells' tenancy), as well as hearing the testimony of the Campbells, was necessary for the trial court to determine the actual condition of the premises. The trial court's decision to admit this evidence is consistent with substantial justice, and should not be overturned because it was a proper exercise of the trial court's discretion.



**III. THE TRIAL COURT SHOULD HAVE AWARDED COSTS AND ATTORNEY FEES TO THE CAMPBELLS BECAUSE LANDLORD AND HER ATTORNEY ENGAGED IN A PATTERN OF DISCOVERY ABUSE AND OTHER MISCONDUCT REQUIRING TRIAL COURT INTERVENTION.**

The trial court's decision will not be disturbed absent an abuse of discretion. See Featherstone v. Schaerrer, 2001 UT 86, 34 P.3d 194, 207. However, the decision not to grant an attorney fee may also be a question of law reviewed for correctness. See Keith Jorgensen's, Inc. v. Ogden City Mall Co., 2001 UT App 128 at ¶11, 26 P.3d 872.

A. The Campbells Prevailed On Their Motion To Compel, And Landlord's Motion To Quash Subpoenas Was Denied.

The trial court did not grant costs or attorney fees after granting the Motion To Compel filed by the Campbells. In fact, the trial court actually ordered the Campbells to pay for the cost of Landlord's plane ticket to Utah.<sup>8</sup> Landlord had to fly to Utah to complete the continuation of her deposition. A second deposition date was required because Landlord failed to produce documents requested many times by the Campbells. See Facts, ¶39.

This Court should reverse the trial court's decision ordering the Campbells to pay for Landlord's plane ticket from San Francisco to Utah. Also, this Court should award costs and attorney fees because the Campbells had to prepare an extensive Motion To Compel, and the Campbells also had to defeat a baseless Motion To Quash Subpoenas filed by Landlord. See Featherstone v. Schaerrer, 2001 UT 86, 34 P.3d 194, 207 (Utah 2001) ("*Utah Rule of Civil*

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<sup>8</sup> The trial court made this decision before receiving the Motion To Compel, and before understanding the full extent of Landlord's scheme to unnecessarily increase litigation costs in a failed attempt to use her superior financial position to force the Campbell family to settle.

*Procedure 37(a)(4) requires the trial court to award the moving party its ‘reasonable expenses incurred in obtaining the order, including attorney fees.’”).*

**IV. THE TRIAL COURT ERRED IN CLASSIFYING MR. CARTER HILL AS AN EXPERT WITNESS, THEREBY PREVENTING HIM FROM PROVIDING AN EXPERT OPINION THAT THE ELECTRICAL SYSTEMS INSIDE 1433 MULBERRY WERE DANGEROUSLY NOT UP-TO-CODE.**

**A. Mr. Hill Was Not Specifically Retained Or Employed As An Expert Witness And Therefore, No Rule 26 (a)(3)(B) Report Was Required.**

The trial court erred in preventing Mr. Carter Hill from providing opinion testimony that the electrical wiring, electrical outlets, and the entire electrical system in the main living area of Landlord’s rental property, were in violation of the Salt Lake County Health and Electrical Code. Having resided in the premises, Mr. Hill had first-hand knowledge of the electrical system inside 1433 Mulberry Way, and with 30 years of experience, he was certainly a qualified licensed electrician.

Landlord objected to Mr. Hill’s expert testimony on the grounds that the Campbells never filed an expert report pursuant to Utah R.Civ.P. 26 (a)(3)(B). Mr. Hill was not allowed to provide his expert opinion. The trial court abused its discretion by not allowing Mr. Hill to testify as an expert. No expert report was required to be provided. Had Mr. Hill testified, he would have given his professional opinion that the electric systems in the entire upstairs part of 1433 Mulberry Way were dangerously not up-to-Code.

**V. THE TRIAL COURT COMMITTED ERROR WHEN IT SUMMARILY DISMISSED THE CAMPBELLS' COUNTERCLAIMS BECAUSE THE CAMPBELLS SUBSTANTIALLY COMPLIED WITH THEIR OBLIGATION TO NOTIFY LANDLORD.**

“We review a trial court’s grant of a motion for summary judgment for correctness, affording no deference to the trial court.” 3D Construction & Dev., LLC v. Old Standard Life Ins. Co., 2005 UT App 307 (citing Ford v. American Express Fin. Advisors, 2004 UT 70 at ¶21, 98 P.3d 15).

**A. Statutory Written Notice Was Not Required To Be Served Because Landlord Had Actual Knowledge Of The Numerous Health And Safety Code Violations Plaguing The Premises, And The Campbells Provided Written Notice Via E-mail.**

The trial court erred in dismissing the Campbells counterclaims without giving the Campbells an opportunity to present evidence in opposition to Landlord’s motion for partial summary judgment. Landlord filed a motion for partial summary judgment based upon the Campbells’ failure to serve Landlord with the written notice required by Utah Code Ann. § 57-22-4(2). The Campbells had requested the trial court permit the Campbells the opportunity to present evidence showing Landlord had actual knowledge of the Salt Lake County Health Code violations underlying the Campbell claims. The trial court refused.

Although Utah Code Ann. § 57-22-4(2) requires written notice be served in accordance with Utah Code Ann. § 78-36-6, Landlord had *actual* notice through telephone conversations with Shannon Campbell, e-mail correspondence, and at least one Salt Lake County Health Department Citation. See Trial Transcript, Vol. 2: 483-484; Def. Exhibit 16.

Landlord admits receiving notice. However, the issue relating to whether e-mail is considered a “writing” in this jurisdiction has not yet been determined.

The Campbells substantially complied with their obligation under the Utah Fit Premises Act. See Trial Transcript, Vol. 1, 125:20-22, 130:13-25, 138:6-22, 140:4-25, etc. Because Landlord had actual notice of the defects, evidence relating to the Campbells’ counterclaims should have been received at trial.

**VI. JUDGMENT SHOULD BE ENTERED IN FAVOR OF THE CAMPBELLS BECAUSE THE TRIAL COURT SHOULD HAVE DISMISSED THIS CASE AT THE CONCLUSION OF LANDLORD’S CASE-IN-CHIEF.**

“We review a directed verdict under the same standard employed by the trial court.” Lee v. Langley, 2005 UT App 339 at ¶7 (quoting Carlson v. Distrib. Co. v. Salt Lake Brewing Co., 2004 UT 227 at ¶13, 95 P.3d 1171). “A directed verdict is appropriate ‘only if, examining all evidence in a light most favorable to the non-moving party, there is no competent evidence that would support a verdict in the non-moving party’s favor.’” Id. (quoting Five F, LLC v. Heritage Sav. Bank, 2003 UT App 373 at ¶12, 81 P.3d 105).

**A. The Campbells Are Entitled To Entry Of Judgment Awarding Them Attorney Fees As The Prevailing Party Because There Is No Evidence Reasonably Capable Of Supporting Any Judgment For Landlord.**

There is absolutely no competent evidence contained in the record that could reasonably support any judgment in favor of Landlord. Viewing this complete lack of evidence in the “light most favorable” to Landlord is akin to multiplying a number by zero. There is simply no evidence to view in a light most favorable to the non-moving party because Landlord

failed to present any evidence that she performed her obligation to lease premises that were (1) habitable, **and** (2) **up-to-Code**. The trial testimony from Landlord that she “believed” the premises were up-to-Code is not competent evidence. Likewise, Landlord’s testimony that the premises were up-to-Code because nobody informed her otherwise, is not competent evidence.

In reality, Landlord had no idea what the condition of 1433 Mulberry Way was because she was either preparing for one of her trips to Europe, or she was enjoying retirement at her home in San Francisco. Without a property manager in Utah, or any other reliable way to know what the condition of her property was, Landlord was simply not competent to provide any testimony on this issue because she had no first-hand knowledge of the condition of her property. There is simply no evidence in the record showing Landlord rented 1433 Mulberry Way in a condition that was in compliance with the Salt Lake County Health Code.

Unfortunately, the trial court failed to consider and apply the requirement contained in the Utah Fit Premises Act that the premises be both habitable, and up-to-Code. See Utah Code Ann. §57-22-3(1). Instead, the trial court focused exclusively upon Landlord’s obligation to provide “habitable” premises. Landlord’s failure to present evidence in support of each of the elements necessary to establish a prima facie case for breach of contract means that the trial court should have dismissed this case at the conclusion of Landlord’s case-in-chief.

Although a trial court has broad discretion when ruling upon post-trial motions (and the trial court’s decision will not be overturned absent a clear abuse of discretion), if a trial court’s decision to deny a new trial is the result of a determination of law, such a legal decision

is reviewed under a correctness standard. Crookston v. Fire Ins. Exchange, 860 P.2d 937 (Utah 1993). In the instant case, the trial court's decision was clearly erroneous given the complete lack of evidence contained in the record. Landlord failed to meet her burden of proof at trial because she did not tender the performance required of her under the lease contract.

Likewise, the trial court's decision denying Campbells' post-trial motions should be reversed because it was an abuse of discretion. The Utah Fit Premises Act requires every landlord to provide habitable premises that are also in compliance with the health and safety code in effect in the local jurisdiction where the rental property is located. See Utah Code Ann. §57-22-3(1). These conditions must be satisfied by every landlord who leases residential property in Utah. Landlord could not possibly have satisfied this burden given the undisputed evidence that 1433 Mulberry Way was not up-to-Code at both the beginning, and at the end of the lease term. See Addendum, Def. Exhibits 16 & 33.

This Court should reverse the trial court's decision denying the Campbells Motion For Directed Verdict, dismiss Landlord's frivolous claim, and enter judgment in favor of the Campbell family. Alternatively, this Court should also reverse the trial court's decision denying the Campbells' post-trial motions because there is absolutely no competent evidence in the record reasonably capable of supporting any judgment in favor of Landlord. Thereafter, the Campbells respectfully request this Court remand this case with instructions directing the trial court to determine an appropriate amount of fees for the Campbells are the prevailing party.

B. The Campbell Family Should Receive Attorney Fees and Costs Because Landlord's Claim Is Without Merit.

In addition to dismissing Landlord's case and entering judgment in favor of the Campbells, the Campbells should receive attorney fees pursuant to Utah Code Ann. §78-27-56. See Wardley Better Homes & Garden v. Cannon, 2002 UT 99 at ¶¶28-31. Costs and sanctions are also appropriate under the circumstances. See Utah R.App.P. 33 & 34.

Landlord's breach of contract claim is without any merit whatsoever, and it should have never been filed in the first place. This conclusion may be confirmed by comparing the considerable amount of evidence submitted by the Campbells with the complete lack of any competent evidence offered by Landlord. Despite the obvious lack of evidence supporting Landlord's case, Landlord nevertheless claims she could not have "reasonably predicted" the outcome of this case. See Brief of Appellant, p. 35. Remarkably, Landlord wants another trial to remedy her negligence because not doing so will supposedly create a danger that another litigant in the future will have "an opportunity . . . to present an unmeritorious claim . . .". See Id. The hypocrisy contained in this argument is astonishing.

This Court should heed Landlord's disingenuous warning and explicitly hold in this case that all landlords have the responsibility to ensure their rental properties are in compliance with the obligations set forth in the Utah Fit Premises Act. This Court should hold that every single rental property leased in this State should be habitable, and offered for rent only after landlords ensure the rental unit is in compliance with health and safety codes. Such a holding will provide the predictability so desperately sought by Landlord, and it will

undoubtedly ensure that tenants have decent housing for their families. Landlords and their attorneys will then be in a better position to reasonably predict defeat whenever contemplating a lawsuit concerning residential premises not in compliance with the Utah Fit Premises Act. Such a policy will decrease the burden placed upon judicial resources because it will deter landlords from filing retaliatory claims involving premises not in compliance with Utah law.

C. The Campbell Family Should Receive Attorney Fees and Costs Because Landlord Pursued This Case In Bad Faith.

From the very outset, Landlord conducted herself without any indication that she possessed a good faith intent to resolve this case on the merits. It was not until appellate mediation occurred did Counsel for the Campbells receive a settlement proposal from Landlord. Not surprisingly, that proposal was for payment of Landlord's attorney fees.

This case is not about the \$1,095 in rent Landlord claims is owed for the last month of rent, or the \$50 late fee for the April rent that was tardy, or the \$120 utility bill the Campbells never refused to pay. It has never been about the recoupment of legitimate damages. If it had, filing a small claims affidavit would have sufficed because the total amount of damages claimed at the outset of this case was much less than the \$5,000 jurisdictional maximum of Utah's small claims court.

This case is about spite and callous indifference toward nice folks who didn't have a home of their own, and who just wanted a decent place for their children to live. For Landlord, this case has always been about punishing Shannon Campbell. And for what? Because Shannon wanted a decent home for her three children? Because Shannon knew enough



to involve the Health Department after it became clear Landlord didn't want to do anything to repair her crumbling rental property while Landlord was vacationing in Norway and Copenhagen? Because Shannon insisted upon asserting her rights as a mother and a tenant, and Landlord couldn't be bothered to do what any decent human being would do? No.

Based upon Landlord's conduct, this case is about the *process* of litigation, and the stress and anxiety it causes to those unable to pay for the services of a trial lawyer. Landlord knew from the outset the Campbells could not afford to pay for their own defense, and Landlord's request for yet another trial speaks volumes about Landlord's true motive. Landlord probably assumes the Campbells will surrender; just like what had occurred with each of the dozen or so former tenants who had been sued by Landlord each and every year since 1989. Fortunately, the Campbell family is unwilling to back down from what they believe to be right, and now this Court has an opportunity to put an end to this shameful behavior.

Having an attorney fee provision in a contract is an enticing offer to any attorney who reasonably believes, in good faith, that the underlying claim has merit. Given the facts of this case, it is almost impossible to contemplate a situation where any reasonable attorney could, in good faith, believe Landlord's claim possessed merit. If it wasn't apparent at the outset of this case, the lack of evidence supporting Landlord's claim was certainly became apparent during discovery. At the latest, this case should have been voluntarily dismissed by Landlord and her attorney at the conclusion of discovery.

Granting the Campbells' request for attorney fees and costs will hopefully be a sobering deterrent for every attorney who decides to partner with a plaintiff who wishes to bring a claim for unlawful purposes. Hopefully the next time an absentee landlord enters an attorney's office in this State, and communicates a factual scenario similar to this one, that attorney will think very carefully about representing someone who leases property in violation of the Utah Fit Premises Act and applicable local health and safety codes.

D. The Campbell Family Should Receive Attorney Fees and Costs Because Landlord's Claim Is Frivolous.

Landlord's claim is frivolous because it has no basis in law or fact, and Landlord clearly had no legal basis for recovery. See Wardley Better Homes & Garden v. Cannon, 2002 UT 99 at ¶¶28-33 (remanding with instructions to trial court to award reasonable attorney fees to defendant who prevailed on meritless claim). Additionally, the Campbells respectfully request and award of attorney fees and costs pursuant to Rules 33 and 34 of the *Utah Rules of Appellate Procedure*. Given the long history of misconduct in this case by Landlord and her attorney, all or part of any such reimbursement should be paid by Mr. Thor B. Roundy.

**CONCLUSION**

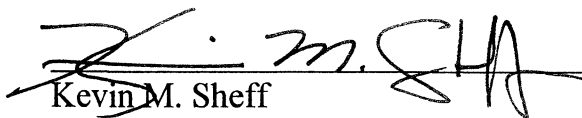
Now is the time to deliver a message to every landlord who continues to believe it is acceptable to lease residential property "as is." *Caveat emptor* is not the rule in our community when it comes to rental housing. Directing a verdict in favor of the Campbell family will send this message. Entering judgment against Landlord will also serve as a warning to all landlords that courts will not sanction or tolerate the abuse of tenants who just wanted to

provide a decent home for their children. The trial court should have granted the Campbell family's motion for involuntary dismissal because Landlord did not present any evidence that she performed her obligations under the lease contract.

This is certainly not the first time an absentee landlord has tried to take advantage of a tenant. If attorneys are to be encouraged to defend tenant rights from retaliatory attacks launched by unscrupulous landlords, this Court should grant attorney fees and costs to the Campbells. Providing this incentive to trial lawyers who take cases where tenants cannot possibly afford to pay legal fees and litigation costs, will hopefully make landlords and their attorneys think twice about using the court system for improper purposes. The Campbells respectfully request this Court dismiss Landlord's case, and remand with instructions for the trial court to determine fees and costs to be given to the Campbells as the prevailing party.

DATED this 29<sup>th</sup> day of June, 2006.

**SHEFF LAW OFFICES, L.C.,**

A handwritten signature in black ink, appearing to read "K. M. Sheff", written over a horizontal line.

Kevin M. Sheff

Ryan M. Lambert

Attorneys for Klaus & Shannon Campbell

**CERTIFICATE OF SERVICE**

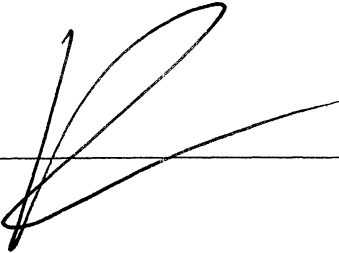
I hereby certify that a true and correct copy of the foregoing **BRIEF OF APPELLEES**, dated June 29, 2006, was served upon the following persons in the manner of service specified below:

Via hand-delivery on: 06/29/06

Thor B. Roundy  
448 E. 400 South, Suite 100  
Salt Lake City, Utah 84111

Via hand-delivery on: 06/29/06

Clerk, Utah Court of Appeals  
450 South State Street  
P.O. Box 140230  
Salt Lake City, Utah 84114-0230

  
A handwritten signature in black ink, consisting of a large, stylized 'R' or 'B' shape, is written over a horizontal line.

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DEF. EXHIBIT 11	Salt Lake County Health Department Complaint Investigation Form, dated June 23, 1998 .....Tab #11
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DEF. EXHIBIT 16	<b>First</b> Salt Lake County Health Department Citation to Landlord, dated September 14, 1998 .....16, 45, 48, Tab #16
DEF. EXHIBIT 17	E-mail Correspondence from Shannon Campbell to Landlord, dated September 15, 1998 .....16, Tab #17
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DEF. EXHIBIT 32	E-mail from Shannon Campbell to Landlord, dated May 5, 2000 .....Tab #32
DEF. EXHIBIT 33	<b>Second</b> Salt Lake County Health Department Citation to Landlord, dated May 18, 2000 .....14, 18, 20, 48, Tab #33
DEF. EXHIBIT 34	Letter from Shannon Campbell to Landlord, dated May 30, 2000 .....Tab #34
DEF. EXHIBIT 39	Landlord's Newspaper Rental Advertisement, dated July, 2000 .....19, Tab #39
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TRIAL TRANSCRIPT	Trial Court Transcript, Vol. II, 538:23-570:7.....Exhibit B

Tab 1

**Unfurnished Houses**

2 bdm, 2 bath, spec  
1 owner, great loc.  
Call 944-2412

5 bdm, 3 bath,  
southwest rosewood  
3913, 808-905-9828

3 bdm, newer  
kitchen/dryer, unit-  
125, 945-3459

2 bdm, spec, view  
115, 318-376-4784

4 bdm, phone  
L, 943-943-8887

2 bdm, spec, view  
115, 318-376-4784

in 12/1, 9700,  
943-2426

Gorgeous estate,  
3-4 bdm, pool & spa. Call  
944-4472

1 neighborhood,  
119

3 bdm, pool,  
943-262-3676

**Unfurnished Houses**

month-month,  
100% call. David  
944-4411

OR RENT

★

**RENTALS**

INDOS, APTS,  
E. LISTINGS  
OR SERVICE  
CHARGE LESS

**RENTALS**

133

124 E.

1.

2 bdm,  
bath,  
2% bath

2 bdm,  
2 bath,  
1st, 4 bath

2 bdm,  
4 bath

**RENTALS**

condo apt  
125

ARE

com  
15  
in homes  
OR FREE  
15

VICE

**270—Unfurnished Houses**

CORONWOOD Heights, deluxe w/h  
home, 2,664 sq. ft., 4 bdm, 3 bath,  
formal dining, family room,  
fenced, 2 car gar, quiet cul-de-  
sac, \$1,250/mo., plus security.  
New carpet New tile, Richard own-  
er/agent. Avail. now 944-9579.

CORONWOOD HEIGHTS-2 bdm, 1  
bath, living rm., dining rm., washer/  
dryer, charming free covered  
yard with great loc. 7442 So. 3500  
East, 9900 mo. Includes utility.  
464-9246 or (313) 649-0611.

CORONWOOD HEIGHTS-Executive Hse.  
4 bdm, 3 bath, 2 tpic, large family  
room, 2 car garage, large  
fenced yard, \$1,300/mo., Jay, own-  
er/agent. 981-9943; 658-7630

CORONWOOD Back number with  
valley view, 5 bdm, 3 bath, item  
in, dble gar, fenced yard, deck,  
pool. No pets/insects. \$1,300.  
Moyle 943-6131 or (943) 943-9639

CORONWOOD Estate, 4 bdm, 5  
bath, covered pool/patio, 6 car  
garage, tpics, security sys. \$1,300.  
\$1,350 dep. 943-2262 Roberts Realty

CORONWOOD 7332 S 17th E  
3 bdm, 2% bath, 2 car garage, RV  
port. No smoke, pets nego.  
\$1,000. 942-7811.

CORONWOOD 1 bdm, 995 or 2  
bdm, estate 944-8967, 262-9494

CORONWOOD 47 HOUSES TO RENT  
GET A LIST AT EXPRESS 261-4433

CORONWOOD Heights, pet, 3 bdm  
2% bath, gar, 268-0099 RELIABLE

CORONWOOD Heights, pet, 5 bdm 3  
bath, 2 gar, 268-0099 RELIABLE

CORONWOOD, only 995, 4 bdm,  
pet, 2 bath, mod, 268-0099 RELIABLE

CORONWOOD, pet, 4 bdm, 2%  
bath, fenced yd, 268-0099 RELIABLE

COUNTRY 2 BDRM, \$200 W/3 GAR.

**COUNTRY RENTAL HOMES**

WITH OR WITHOUT ACRES  
GET A LIST AT EXPRESS 261-4433

**EXPRESS RENTALS**

261-4433

COUNTRY CLUB, 4 bdm, 2 bath,  
large liv. and fam. rooms, nice  
yard, no smoke/pets, 2172 S. Wal-  
lington (1830 E) \$1,100. 944-8890

DOWNTOWN-356 East 800 South,  
beautifully renovated 2 bdm  
house, washer/dryer, no smoking,  
pets ok. \$900/mo. MUST SEE

DOWNTOWN 18 HOUSES TO RENT  
AND MORE AVAILABLE SOON  
GET A LIST AT EXPRESS 261-4433

DOWNTOWN 2 bdm, \$525 + dep.  
No pets. 466-2857

DOWNTOWN 4 bdm, \$780. Good  
net from 831-7361, pgr. 339-3254

DOWNTOWN, 2 bdm, pet, fenced,  
den, patio, \$585. 268-0099 RELIABLE

DRAPER, So. Mountain, 3 bdm, 2%  
bath, detached gar. with opener,  
security sys., dishwasher, air cond.,  
washer/dryer, \$1,375. 623-0044

DRAPER 14 HOUSES TO RENT  
AND MORE AVAILABLE SOON  
GET A LIST AT EXPRESS 261-4433

DRAPER 3 bdm, 2% bath, fenced  
yd, 2 car gar, Central air  
\$1,200/mo. Call 572-4753

DRAPER home property, 4 bdm,  
2 bath \$1,200/mo., 271-6278

DRAPER 11656 So. 700 East 3 bdm,  
home prop. \$1,300. REB. 534-8356

**270—Unfurnished Houses**

KEARNS: new home, 3 bdm, 1 bath,  
3 level, 2 car gar, new neighbor-  
hood. Convenient loc. 1090, \$489  
dep. 944-8743.

KEARNS 12 HOUSES TO RENT  
AND MORE AVAILABLE SOON  
GET A LIST AT EXPRESS 261-4433

KEARNS, 3 bdm, 2 bath, 2 car gar,  
large fenced yard, \$625/mo., locally  
broken Wagon & Assoc. 261-4444.

KEARNS-2 bdm, newly remod.  
home, new carpet/flooring  
swamp cooler, mod. 948-3696

KEARNS 3 bdm, 2 bath, ok, \$795  
4448 So. 4430 W. Hage garage  
Prudential www.prd.com 268-7254

KEARNS 4743 So. 10th, 4 bdm,  
2 bath, \$675. REB. 534-8356.

KEARNS 3 BDRM, 2 BATH, DEN, PET  
OK, FRIDGE, VIEW, 268-0099 RELIABLE

LAYTON MOORE-1388/mo.; 3 bdm,  
2 bath, 2 tpic, 2 car gar, washed  
carpet, fenced yd, ranch style, up-  
dates, unfinished basement, down-  
stairs w/house office, lots storage,  
easy access to 89/94/193, 20  
min to Orem/WEST, 40 to SLC,  
5 to HALE, Dogs OK. 774-4319

LAYTON- Great East Layton loc. 5  
bdm, 3 bath, large yd. No smok-  
ing/pets. \$900/mo. 476-6976

LYNN 2287 Np. 648 West. Best \$1,000  
dep. \$1,000. large 4 bdm, 2 bath,  
fam. room, wood floor, 2 car gar.  
Pattler Prop 948-8951

LIBERTY PARK lovely Victorian house.  
3 bdm, 1% bath, Sat. 9-4. Sun.  
offer 1 pm. 467-9441.

MAGNA: Beautiful 5 bdm, 2 bath,  
built-in microwave, clean top  
range, brand new dishwasher, hot  
tub, alarm sys., automatic irrigation,  
deck, fully fenced backyard, \$1,000  
/mo. Call 467-4741, 468-7784

MAGNA: New home, 2 bdm, 2 bath,  
dishwasher, washer/dryer haps,  
disposal, 3 car gar, with home  
property, \$1,000/mo. \$500 security  
dep. Available 6/1/98. 268-0984.

MAGNA \* 4 bdm, 2 bath, 2 living  
rms, very nice clean, large fenced  
yard w/wood washer/dryer haps.  
\$900 + deposit. 288-2275.

MAGNA 11 HOUSES TO RENT  
AND MORE AVAILABLE SOON  
GET A LIST AT EXPRESS 261-4433

MAGNA 3 bdm, 2 bath, large ga-  
rage, \$600. Owner/broker. 978-7777.

MAGNA, pet ok, 2 bdm, washer/  
dryer, mod, \$600. 268-0099 RELIABLE

MAGNA, 3 bdm, 2 bath, 2 car, pet  
ok, only \$600. 268-0099 RELIABLE

MIDVALE 4 bdm garage, mod yard,  
RV port 7228 S. 16th E. \$1,100. +  
util. \$750 dep. 653-6543.

MIDVALE-341 E. 7000 So. 3 bdm 2  
bath, mod yard, no pets/smoke, Vo-  
cab. \$1000/mo. 567-4318, 598-7366

MIDVALE 3 bdm, 2% bath, \$900. No  
fee. Bonded broker. 399-7779

MILLCREEK 2647 East 2960 So.  
nice 3 bdm, 1 bath, children's  
play room, great yard/  
neighborhood, pet ok, 1 car gar.  
\$995. No rent. 944-4000.

MILLCREEK 5 bdm, 3 bath, great  
area, near school, new carpet,  
garage. No pets/smoking. 1 yr  
\$1,300/mo 243-5630

MILLCREEK-St. Mod's area. Nice 3  
bdm, 1 bath, gar, fenced yd, on  
quiet st. great neighborhood  
\$900/mo + dep No smoke 467-9515

MILLCREEK Northside, 2,400 sq. ft.,  
beautiful yard, private in. 3 bdm,  
2% bath, family rm. No pets/  
smoking. \$1,175. 467-3704.

**270—Unfurnished Houses**

SANDY-8843 S. 540 E. 4 bdm, 1 bath,  
1st yard, being remodeled. NO  
PET \$900/mo. plus dep. Contact  
Wag. R.E. 277-7487.

SANDY: 3 bdm, 2 bath, 2 car ga-  
rage. New carpet, \$995/mo. 3  
month lease min. 1792 S. View Dr.  
985-4967 or 898-912-0231

SANDY \* Butlercup Park. 4 bdm,  
2 bath, fenced yd. \$1,195/mo.  
10875 Rimborough Rd. (1680 E.)  
No pets/insects. 568-9412

SANDY-EAST, RENT/LEASE/BUY.  
5 bdm, fenced, tpic, 2% bath, RV  
port, 2 car gar, \$980 S. Sagescent  
Dr. (2285 E.) \$1,350/mo. 943-4490

SANDY-3 bdm, 3 bath, 2 yr, end of  
cul-de-sac, nice area. \$1300 mo.  
1st and last mo. and dep.  
891-388-4967 or 891-889-1491

SANDY: 5 bdm, 3 bath, split level  
washer/dryer, dble carport, fenced  
yard, great views & location.  
\$900/mo., terms nego. 647-3673

SANDY-8846 S. 680 E. 2 bdm, 1 bath,  
900 sq. ft., remodeled, unfinished  
basement, laundry room, no smoke/  
pet. \$750. \$400 dep. 576-9436

SANDY number 9405 So. Pawlton  
(1680 E.) 4 bdm, 2 bath, 2 tpics, 2  
car gar, hot tub, lg back yd.  
\$1,100/mo. 942-9724

SANDY 3 bdm, 2 bath + large  
basement with 2 bdm. Room improve-  
ments in progress. \$800/mo.  
1433 Midway (2220 S.) 568-4622

SANDY-Large home with 3rd fl. pet  
one CR 3 bedrooms, 2 bath, hook-  
ups, garage, \$1000/mo. Proactive  
Property Management 272-6000

SANDY cute 2 bdm, 1 bath, full bath,  
big lot, fenced, pet, fireplace.  
Avail. now \$650/mo. 866-7272

SANDY, newly remodeled, 4 bdm, 2  
bath, storage, \$675. Locally broken  
Wagon & Assoc. 261-4444. No fee.

SANDY 66 HOUSES TO RENT  
AND MORE AVAILABLE SOON  
GET A LIST AT EXPRESS 261-4433

SANDY 3 bdm, 2 bath, fam. room,  
great view, approx. 1900 So. 1200  
E. \$1,025/mo. 572-6224, 541-8589

SANDY \* 3 bdm, 2 bath, tpic, ga-  
rage, fenced yd. No smoking. Pets  
nego. \$1,000. Call 328-9615

SANDY 8 bdm rancher, quiet cul-  
de-sac, 2 Michans (in-law unit poss.)  
\$1900 mo. 93446 S. 2440 E. 942-4413

SANDY 4 bdm, 3 bath, view \$1150  
1887 E. 3rd View (9515 So.) 3-car gar  
Prudential www.prd.com 228-7254

SANDY 3 bdm, 2 bath, gar, \$975  
9161 Parkway (935 E) Pet nego.  
Prudential www.prd.com 228-7254

SANDY 3 bdm, 2 bath, 2 garage  
Hot tub, family rm, \$900. 664-0606.  
WILLOW CREEK REALTY 943-7070

SANDY 4 bdm, 3 bath, RV port, 733  
E. 9990 So. \$995. Call 943-2135

SANDY 5 bdm, (1375/mo. No smok-  
ing/pets. 399-2064 or 250-7787

SANDY 2 bdm, 2 bath, washer/  
dryer, mod, 268-0099 RELIABLE

SANDY, pet ok, 4 bdm, 2 bath,  
garage, mod, 268-0099 RELIABLE

SANDY 3 bdm, 2 bath, 2 car, fam.  
and pet, pet, 268-0099 RELIABLE

SANDY, Clean 3 bdm, 2 bath, 2 car  
garage, fenced, ready now  
\$1,190 (309) 910-1841

SANDY/East 4 bdm, 2% bath, 3 tpic,  
hot tub, fenced yd, 2 car gar  
\$1,200/mo. 576-0620

SOUTH St. Sparkling Clean, 4 bdm, 1  
bath, hookups, fenced yd. No  
smoke/drink, pets \$900 mo. 201  
Southside Ave (2735 S) 947-1457

**270—Unfurnished Houses**

WEST VALLEY- Completely remod-  
eled, 3 bdm, 1% bath, cul-de-sac,  
laundry rm, 2 car carport. LG  
fenced yd. 9775 S. Idaho Cir.  
(7065 W.) \$900/mo. 872-3995

WEST VALLEY CITY 6 bdm, 3 bath,  
new carpet & paint, family room,  
garage, nice area. 9731 E. Lee Moor  
Dr. (2748 West). \$1000. 254-4377.

WEST VALLEY-4 mo to 1 yr. lease, new  
custom home, 4 bed, 3 bath,  
home prop. 2733 S. 7200 W.  
\$1200/mo. Frings & Co. 486-4296.

WEST JORDAN, 3636 W. Sandy Cr.  
(7040 So.) Best \$1,000. dep.  
\$1,000. 4 bdm, 3 bath, fam. room,  
3-car gar. Pattler Prop 948-8951.

WEST POINT, 3 bdm, 2 car gar, 2  
bath, washer/dryer haps, living/  
din. rooms, pet ok. \$850/mo.  
\$900/dep. 475-2935, 2225 N. 3000 W.

WEST JORDAN 21 HOUSES TO RENT  
AND MORE AVAILABLE SOON  
GET A LIST AT EXPRESS 261-4433

WEST JORDAN-6800, 4 bdm, new  
carpet/paint, 3509 West 8280 So.  
Moody & Assoc. 571-8848

WEST VALLEY 11 level, 3 bdm, 1%  
bath, new carpet, appt. No pet/  
insects. \$900. \$500 dep. 949-3712

WEST VALLEY 3 bdm, garage  
\$955/mo. \$700 dep. No pet.  
\$475 W. 2640 S. 278-3330

WEST Valley home, 4 bdm, 2% bath,  
2 car gar, covered patio. \$1,020  
mo. \$1,000 dep. Call 943-6402

WEST JORDAN, Home Prop. 5 bdm, 2  
bath, washer/dryer, storage, family  
rm. No pets. \$950 + dep. 250-7324

WEST VALLEY, Great home, 4 bdm,  
ready to rent, \$900 + dep.  
277-6747 & 463-9034

WEST Jordan, new 3 bdm, 2 bath,  
Great neighborhood w/nc, pool  
\$1,300 mo. \$100 dep. 280-6144

WEST VALLEY 4 bdm, 2 bath, No in-  
to/pets. New paint/coast/rile  
hookups. \$900/mo. 294-9400

WEST JORDAN-3 bdm, 2 bath, mod  
yard, no smoke, pets nego. \$700  
696-0790 call. 10am Sat & Sun

WEST VALLEY 5 bdm, 2% bath,  
fenced yard w/irrigation, mod.  
\$1,150/mo. 946-1962

WEST VALLEY 3 bdm, 2 bath, 2 car  
gar. \$675. 254-5441

WEST JORDAN - 3 bdm, 2 car gar  
no smoke/pets. \$900. 446-7975

WEST JORDAN 3 bdm, 6890 S. 3360  
W. \$940/mo plus dep. 268-0036

WEST JORDAN 4 bdm, 2 bath, 2  
gar, den, mod, 268-0099 RELIABLE

WEST JORDAN PET OK, 4 BDRM, 3  
BATH, 2 GAR, DEN, 268-0099 RELIABLE

WEST VALLEY 4 bdm, 2 bath, 2 car  
tpic, pet, 268-0099 RELIABLE

WEST VALLEY 2 BDRM, GARAGE,  
HOOKUP VIEW, 268-0099 RELIABLE

WEST VALLEY 3 bdm, 1% bath, ga-  
rage, mod, \$695. 268-0099 RELIABLE

WESTMINSTER Spacious bungalow 3  
bdm, 2 bath, family rm, tpic, can  
hol or utility hobby & sewing rm.  
1 car gar \$1200 plus deposit  
Avail. 7-11:00 S. 1400 E. 942-2500

WOODCROSS Ranches 3 bdm  
1% bath, terrace, fireplace,  
garage. Must see. \$925 mo.  
Proactive Property Management  
272-6000

SELLER FINANCE, 0% INT TO OWN  
4 Bedrooms, 2 bath, mod, 1  
\$109,900. Call Bob Abbott 948-

**270—Unfurnished Houses**

HOLLADAY  
tpic.

HOLLADAY  
adult.

MIDVALE  
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Tab 2

826 Ticonderoga Drive  
Sunnyvale, CA 94087  
June 12, 1998

Dear Shannon and Klaus,

I received your rental agreement and check today. Thank you for sending it overnight so I can rest easy while I am gone. I am enclosing a signed copy for your records.

During my trip to Norway, please contact either of my sons if you have an emergency:

Don	408-725-0400
Gary	408-243-2732

The handyman is Gus Dixon, 801-455-8314 in case there is something he needs to finish.

When I get back I plan to make a trip to Sandy—probably in late August or early September. At that time we can figure out what we need to do about the carpet. I appreciate your patience until then. I am looking forward to meeting you.

Best regards,

  
Geralynn

Tab 3

Signed To EE0000062 - NEWBOLD, KEITH  
Solved By EE0000062 - NEWBOLD, KEITH  
Entered By DBA  
Received By EE0000044 - IVERSON-CORNISH, MARY

Date 6/23/1998	Time 09 01 42
Date 6/26/1998	
Date 6/23/1998	
Date 6/23/1998	Time 09 01 42

**Core of Problem:**

ESTED WITH ROACHES, CARPET SO FILTHY IT IS STICKY, FURNACE IS FULL OF LINT, MT FUEL SAID IT WAS DANGEROUS FILTERS HAVE  
'ER BEEN CHANGED. OTHER PROBLEMS.

signed to Complaint. S405 - HOUSING

## Client Comments

### DAILY Activity Information Entered

**No Program/Element or Daily Time & Activity record entered**

**No Activity Minutes Entered**

### No Travel Minutes Entered

## Y Book Comments

## PLANT Book Comments

COMPLAINT Book Comments Entered

02 - COMPLETE

Report 

Tab 4



## NOTICE OF UNSAFE OPERATING CONDITION



Customer Name (Last)	(First)	(Middle)	Date	Time of Arrival
			8-22-98	AM
Service Address (City)			Order No.	
1433 Marlberry Way				
			QGC Rep.	

Your water heater has been found to be in an unsafe operating condition and was shut off today because leaking 1/2 flex line

This disconnection of service does not indicate or imply that the above appliance has been inspected for or is free of any defect other than herein noted. It will be necessary for you to have your plumbing or heating contractor make proper repairs, corrections and a complete inspection. If you desire a QGC representative to inspect this condition after the necessary repairs and/or corrections are completed, please contact our office to schedule an appointment, phone 324-5111

Customer Signature (if available)  
X Shannon Caldwell

ORIGINAL - Customer Copy COPY - QGC Copy

50184 1/98

Tab 5



Murray, Utah 84107-6379  
801-313-6608 Fax

Division Director  
Terry Sadler  
801-313-6600

September 14, 1998

Donald V. and GERALYNN V. MYRAH  
826 TICONDEROGA DRIVE  
SUNNYVALE, CA 94087

Dear Mr. and Ms. Myrah:

The Salt Lake City-County Health Department has responded to a referral concerning 1433 South Mulberry Way, Sandy, UT 84093, for which you are responsible.

An inspection of the premises on September 11, 1998 confirmed the following conditions existed:

- There was tile missing around the shower in the back bathroom.
- The cabinets were missing parts of molding and wood leaving gaping holes.
- The cabinet doors in the kitchen would fall off.
- The light fixture in the front bathroom was hanging down by its wires.
- There were power outlets and light switches missing cover plates.
- The hot water heater did not have a down spout attached, and was missing the temperature adjustment dial.
- The toilet was leaking into the downstairs basement.
- There were alleged spiders and cockroaches.
- The storm door on the back porch did not fit properly.
- The fence in the backyard was falling down.
- There was a broken window in one of the bedrooms.
- There are no screens in any windows.

You are notified that these conditions are in violation of the following Health Department Regulations:

3-5.1

No owner or other person shall occupy, let to another person, or permit occupancy of any dwelling or dwelling unit unless it and the premises are safe, clean, sanitary, in good repair, fit for human occupancy, and in compliance with these regulations and all other appropriate laws.

3-5.12

If appliances and furnishings are supplied by the owner, they shall be installed and maintained in good repair by the owner.

3-7.1

Every foundation, inside stairs, chimney, floor, exterior and interior walls, ceiling, roof, etc. shall be weather and water-tight, insect and rodent proof, and maintained in good

**BUREAUS:**

Air Pollution Control / Food Protection / Sanitation & Safety / Water Quality & Hazardous Waste / Environmental Risk Reduction





801-313-6608 Fax

Division Director

Terry Sadler  
801-313-6600

Page 2

Donald V. and GERALYNN V. MYRAH

RE: 1433 South Mulberry Way, Sandy, UT 84093

- repair. All interior surfaces shall be painted or repainted as necessary to maintain a clean, washable surface, and sanitary environment.
- 3-7.2 Every window, etc. shall be weather-tight, pest proof, and kept in good repair.
- 3-9.2 Adequate ventilation required. Every habitable room shall have at least one window or skylight facing directly outdoors that can be opened easily or have other devices that ventilate the room adequately. All openable windows shall be provided with a screen in good repair that prevents the entrance of pests.
- 3-9.7 Every dwelling shall be supplied with electrical service, outlets, wiring, and fixtures that are properly installed and maintained in good and safe working conditions prescribed by law.
- 7-12.1(a) A substandard dwelling will be closed that is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that creates or may create a hazard to the health or safety of the occupants or of the public.

Please make appropriate repairs of the electrical systems, windows, and other violations mentioned. Please take the appropriate measures to handle the spider and cockroach problem.

This shall be done before October 1, 1998. A reinspection will be made on or after this date.

Sincerely,

Michael H. Dalley, Inspector  
Bureau Environmental Safety and Sanitation  
(801) 313-6650

Gene C. Devenport, Supervisor  
Bureau Environmental Safety and Sanitation  
(801) 313-6654

MHD/GCD/md

cc: Tenants

**BUREAUS:**

Air Pollution Control / Food Protection / Sanitation & Safety / Water Quality & Hazardous Waste / Environmental Risk Reduction

Tab 6

Subj: Important!  
Date: 9/15/98 8:42:41 PM Mountain Daylight Time  
From: SPITZE  
To: donmyrah@hotmail.com

Dear Gerlyn and Don

9-14-98

I would like to inform you that in a few days you will be receiving a letter from the Utah health department about the house at 1433 E. Mulberry way. As you know, we have had many problems since we have moved in here. Roaches, gas leaks, spiders, cabinets falling off the hinges, to name a few. The back yard fence is still in desperate need of repair and it remains very hard for me to keep him contained in the yard. The cabinets in the kitchen are falling off the hinges again. My concern is that one of my children will be injured by a falling cabinet.

About the many bugs. I do not believe that buying a spray and treating the house ourselves will do much good until some provisions are made with the house as a whole. There are numerous cracks and areas that simply are not closed off in the house. Have you looked underneath the stove for example? How about the dish washer (which, by the way doesn't work hardly at all)? The appliances simply do not fit appropriately into the space that is provided for them. It is the same situation with the counters and cabinet space in the bathroom and also in the kitchen. Things are not properly sealed. When I was ripping out the old carpet, I was able to get a birds eye view of the heater vents and it looks as though someone has used them as a urinal and a garbage can. I will soon need to turn on the heater and all of that stuff will be blowing into the air that my children will be breathing. The fireplaces were not cleaned when we moved in. I have cleaned out the one on the main floor but have not yet been able to bring myself to clean the one in the basement. There is a tile missing in the master bathroom. When I brought it to your attention you said "I told Gus to fix this. I wonder why he didn't". When Gus was here, I asked him about it and he said "we wanted to fix that and she didn't want us to. Now, I hear from Gus that they don't make them anymore. I have already begun to see these hobo spiders in the master bathroom. That hole is huge. With the condition that the backyard is in, it is perfect habitat for those spiders. If you would like to get information on them, they even have their own web site. Type in Hobo Spiders in net find and you should be able to find it.

I am sorry that I had to get an inspector from the health department to come out but I have to look out for the safety and welfare of my family. My children are afraid to go to sleep at night for fear that a spider is in their bed or crawling on the wall. I have to admit, I am not too wild about it either.

Let me now get to the point before I ramble anymore. I will not feel safe and comfortable in this house until it can be completely sealed of all cracks, crevices and open spaces. The fence needs to be repaired or replaced so that my dog can enjoy his yard. The bug problems need to be taken seriously and something needs to be done with the condition of the backyard, so it is not such an inviting location for them to be in. This house really needs to be detailed, it looks like it has never really had a good cleaning.

I understand that you may not feel it is necessary to do all of these things. If that is the way that you feel, let us please agree to cancel this lease and we will be on our way. I am not willing to put my children through anymore of this drama. I want them to feel safe at night. I realize it must be very difficult at times to take care of property from so far away. I have empathy for you and your situation. Please understand that I must protect my family just like any mother would.

Hannon Campbell  
1433 E. Mulberry way  
Provo, Utah 84093  
(801)255-2895

Tab 7

826 Ticonderoga Drive  
Sunnyvale, CA 94087  
May 6, 1999

Klaus and Shannon Campbell  
1433 Mulberry Way  
Sandy, Utah 84093

Dear Klaus and Shannon,

Just a note to confirm that your lease is up on June 30, 1999. I have enclosed a renewal agreement form, should you wish to stay for another year. Please read the form carefully, as some of the terms have changed from your original lease. If you plan to move at the end of June, please send me written notice at least 30 days in advance. I would appreciate earlier notice if you are able.

Your current lease agreement provides for an automatic renewal of your rental agreement on a month-to-month basis at a rent of \$1100 per month, should you choose to stay without signing a new lease or giving 30 day written notice.

Don and I would like to schedule a week in June to come out to work on the house. It would be great if you could send us a list of work that needs to be done, prioritized, so we can bring the right tools.

Best regards,

Geralynn Myrah

Tab 8

**Subject: Re: 30 days notice from Klaus and Shannon Campbell**

**Date: Fri, 5 May 2000 17:52:24 EDT**

**From: RTNPEN@aol.com**

**To: GERALYNN@jps.net**

In a message dated 5/5/00 3:41:38 PM Mountain Daylight Time, RTNPEN writes:

<< Subj: 30 days notice from Klaus and Shannon Campbell  
Date: 5/5/00 3:41:38 PM Mountain Daylight Time  
From: RTNPEN  
To: GERILYN@JPS.NET

Gerilyn

I am writing to ask you one more time if you will please let us out of our lease one month early. I have found a house in a nice neighborhood near here that I would like to rent and I will probably lose it if I don't come up with the money very soon. I am not in a financial position to pay for both places at the same time.

I understand that this may pose a problem for you and I am hoping that you will take into consideration the fact that we have been good tenants. Shortly after we moved in, the health department told me that I could be released from my lease and your house would be condemned until all of the repairs were made. I chose not to take things that far because I did not want to act in malice. There are still things that the health dept. told you to fix/replace that still are not done. For example, the screen door was supposed to be replaced with one that fit properly to help keep out rodents. There is also the issue of finishing the basement. This was supposed to be done in October of 1998. Then you told me it would be done the following spring. Here we are in May of 2000, and the basement still looks the same as it did when we moved in.

Recently, a man killed 2 people and shot another in the face twice (I have not heard if she lived) two blocks from here at the Extended Stay America. With this, and the crack house down the street, combined with the present condition of the house I simply want to get my children out of this neighborhood as quickly as possible.

I know you want to sell the house and I hope with us out of the picture, you will be able to accomplish this very soon. Please, can you just cut us a break and set us free from this lease as of June 1, 2000?

I do not have E-MAIL right now but, you can reply to the address that I am sending this from and I will get your message. Thank you in advance for your cooperation and I hope you are having a great time in Europe.

Sincerely,

S >>

Tab 9





788 East Woodoak Lane  
Murray, Utah 84107-6379  
801-313-6608 Fax

Division Director  
Pat P. DeLegge, L.E.H.S., M.P.H.  
801-313-6600

May 18, 2000

Donald and GERALYNN MYRAH  
826 Ticonderoga Dr  
Sunnyvale, CA 94087

Dear Mr. & Ms. Myrah:

The Salt Lake City-County Health Department has been referred to 1433 E Mulberry Way, Salt Lake City, Utah 84093. According to county records, you are the owners.

An inspection on Wednesday, May 17, 2000 showed that there were not screens on any windows, except one; The back storm door had a faulty pneumatic door closer so the door remained open about 15 inches. I tried to adjust it but was unsuccessful.

Allegedly the swamp cooler leaks a stream off the roof each summer. There is evidence of damage in the kitchen of prior leaking from the swamp cooler. It is also alleged that the dishwasher doesn't work right. I noted that they were not using the dishwasher at all.

It was my observation that there was poor upkeep on the entire dwelling and premises; problems that are normally taken care of by the owner.

Health Regulations #3 - *Housing* states that:

5.1 It is unlawful to allow occupancy of a dwelling or dwelling unit having violations of these health regulations. What this means is that it is unlawful to allow occupancy by a tenant "as is" with the understanding that the tenant will make necessary repairs and clean after initiating occupancy.

5.2 No owner of any dwelling or dwelling unit shall permit or allow any floors, floor coverings, ceilings, doors, or walls of any dwelling or unit to become dirty, foul, or in a state of disrepair.

5.7 The owner shall be responsible for providing and hanging all screens, storm doors, etc.

BUREAUS.

Air Pollution Control / Food Protection / Sanitation & Safety / Water Quality & Control

11

Donald and GERALYNN Myrah letter  
May 18, 2000 Page 2  
Re: 1433 E Mulberry Way, Salt Lake City, UT 84093

5.8 The owner shall exterminate all infestations of vermin, including roaches, prior to allowing occupancy by a tenant.

5.12 Appliances shall be maintained in good repair by an owner.

7.1 Every foundation, inside stairs, chimney, floor, exterior and interior wall, ceiling, roof, and all accessory buildings shall be weather and water-tight, insect and rodent proof, and in good repair. Interior surfaces shall be painted or repainted to provide a clean and sanitary environment.

7.2 Every window, skylight, exterior door, etc. shall be weather-tight, pest proof, and kept in good repair.

Please bring the premises up to code by making repairs as given above. This shall be done by June 4, 2000. If you have other dwellings or dwelling units within the Salt Lake Valley, also bring up to code any substandard conditions as listed above. Do not allow occupancy in the future of any units "as is", but verify that they meet all requirements of the Salt Lake City-County Health Department.

Sincerely,

*Eugene C. Devenport*  
Eugene C. Devenport, Supervisor  
Bureau Env Sanitation and Safety  
(801)313-6654

ECD/gd

cc:

Mr. & Mrs. Campbell  
1433 E Mulberry Way  
Salt Lake City, UT 84093

Tab 10

Geralynn

504-274-  
801-864-3357

Klaus call  
5-30-2000

This is to inform you of our 30 days written notice. Klaus and I will be moving starting on June 1st, 2000. We will be forfeiting our security deposit to pay for our June rent. If you feel that we owe you any additional funds please feel free to contact us. We will not be occupying the premises in the month of June; we will just need a couple of days to finish up with the cleaning. I can guarantee that the house will be much cleaner when we leave than it was when we arrived. I would appreciate your cooperation in not asking us for any additional funds. When this house was advertised in the newspaper, you advertised it as a 5 bedroom when in fact only 3 of the bedrooms are really bearable. You also advertised this house as having a dishwasher, which it does but, it doesn't work right and it was infested with cockroaches. I feel it is only fair for you to let us out of our lease one month early, and return our security deposit. I know that you disagree with me and I am sure you have no plans for returning it. So simply let us go so that we can move on from this experience. In my opinion, this is the least that you can and should do.

Sincerely,

  
Shannon Campbell

I am forwarding a copy of this letter to the Salt Lake County Health Department.


Tab 11

2 car. garage. 261-4433-2223  
w/4 bdrm, 3 ba, \$169K-572-2944  
E. Browning Ave. 3 bdrm, 2 bath, very clean and \$1,195. Call of Homes.  
any 2 bdrm, tpic, hardy, off-street parking. Immediately 45.  
3/4 ba, 4 level, point, linoleum, juke-box, spin-a-4 dep. No 8320  
4600/dep. Dog/3267  
\$5600 AND UP RESS 261-4433  
EW 3 bdrm, 3 ba, double garage, 272-5300.  
as twin home, 3 gar, 5875. Realty 261-4444 BHO  
ve, 3 bdrm, 3 ba, pkg, 3725. Realty 261-4444 BHO  
2 bath, gar, \$895. 59-7979  
home, \$795. No 1801-362-1914  
ES \$500 AND UP RESS 261-4433  
900 E. 4 bdrm, 65-4757  
3 ba, great yard, possible lease immortant Prop.  
why remodeled, 2 b, 2 ba, 2 fam-269-8605  
I street, 3 bdrm, 1 ba, \$875. Call 641-7420  
as 3 bdrm, 2 bath, family rm, \$995. 261-4444 BHO  
home, 5 bdrm, 3 full ceilings, ac. Open and 4 car. Com-  
ded. Great! Walnut Brook /mo. Avail. 501 Caldwell. Property if 971-5990  
530 E. \$1045. 4, 1 tpic, 2 car gar. No smoke/pets. SYSTEMS 262-3900  
ba, \$850, 3rd. OPEN. 270-8727  
2 bath, air, hard-15500 S. y 15. 272-7975  
3 bath, bid, ga-  
carpet/flooring, ba, 582-2468  
4 bdrm, 2 1/2 car gar, \$1,575. 4-4113.  
60 W. 3 bdrm, 2 m. \$875. Realty 261-4444 BHO  
ES \$675 AND UP RESS 261-4433  
bdrm, 1.5 ba, 5, 523-0491  
option. 5937 1 W. 3 bdrm, 2 m. \$900/mo. 6-5935, 944-4414  
5 bdrm 3 ba, 2 mly room, great no smoke/pets. Call 533-9900 or other hours  
If Park 2 bdrm, use. Secluded amazing views. 355-2978  
1 bd, 2 ba, tpic, ind, much more \$01468-1966  
HOMES \$1195+ ESS 261-4433  
4 bdrm, 2 ba, 273-0748  
m, 2 bath, 2-4220  
bin w/lot, \$600. 531-7317.  
I bath, rambler, and newly its nego. Rent 12640'S. 2360 W 486-4296

2 BDRM. \$750+ 3 BDRM. \$800+ 4 BDRM. \$975+ 5 BDRM. \$995+  
**EXPRESS RENTALS 261-4433**  
SANDY Lease Option. No bank credit. \$1,800/mo. 100% rent credit. \$10,000 down nega. Kevin, 771-0532  
SANDY 9248 So. Winter Wren Dr. (2590 E) \$850. 2 bdrm, 2 car gar, wash/dry incl, cooler, tpic. No smoke/pets. PROPERTY MGMT. SYSTEMS 262-3900  
SANDY 4 bdrm, 3 ba, 2 car gar, fenced yard. 1125 E. Fairbrook Way (8255 S.) No smoke/pets. Avail. August 1. \$1,050/mo. 571-3107  
SANDY 3 bdrm, 2 bath, contemp, air, 2 car garage, \$1,195. No smoke/pets. 944-3399. Re/Max Associates  
SANDY 3 bdrm, single bath. Nice yard and garden. No smoke/pets. \$860/mo. 9969 S. Asler Ln. (800 E.) 915-3277 or 562-1368  
SANDY 3 bdrm, 3 ba, 3 bdrms, 3 ba, vaulted, light, upgrades, central air, no pets/smoke, \$1200. Open Sat. 1-3. 732 E. 8620 S. 685-8342  
SANDY, Immac. 4 bdrm, 3 ba, with all amenities. Nice landscaping. 1677 E. Wood Glen Rd. (10340 S.) \$1,500 abo + dep. 270-5485  
SANDY, new luxury twin home, 3 bdrms, 3 1/2 bath, 2 car gar, yard care, cable TV incl. \$1,200/mo. 501-8438 Eha  
SANDY 10196 So. 440 E. \$995. 3 bdrm, 1 ba, 2 car gar, cooler, unfurnished, front, back, patio. PROPERTY MGMT. SYSTEMS 262-3900  
SANDY 11237 So. Hawkwood Dr. (865 E.) Nice 4 bdrm, 2 ba, den, air, no smoke/pets. \$1195/mo. SAFEGUARD MGMT. 566-9339  
SANDY, 5 bdrm, 2 ba, fenced yard, 2 car gar, 3600 sqft, new paint, carpet, tile \$1700 + dep 943-2840  
SANDY 5 bdrm, 2 ba, jacuzzi in master, great area/shadows, \$1,375 mo. 556-4054, 916-788-1866  
SANDY 4 bdrm, 2 ba, \$1350/mo. Must see. Too much to list. Leave msg. 266-1618  
SANDY 2 bdrm, 1 ba, Quiet, pets OK, references. 7460 S. 410 E. \$750/mo. 566-9171  
SANDY - 4 bdrm, 2 ba, remodeled split level. 9p70 S. 610 E. \$975/mo. For appt., 277-5047  
SANDY 4 bdrm, 3 bath, rambler, 2 car gar, \$1,150/mo. Call David 573-5893. Re/Max Associates  
SANDY 4 bdrm, 2 bath, 1 car gar. \$995/mo. \$900 dep. 6921 S. Tulip Dr. 553-3530, 694-3624, 994-3618  
SANDY 5 bdrms, 3 baths, 1/3 ac. Deck, jacuzzi. Walk to schools. Close to ski! \$1,450. 942-6896  
SANDY - Close to TRAX, good kitchen, 4 bdrm, 2 ba, new kitchen, fenced yard. \$1,050. 268-9763  
SANDY 1577 E. 10340 S. 3 bdrm, 2 ba, gar, family rm, wash/dry, \$1050. Realty Brokers Wager 261-4444 BHO  
SANDY Executive Home. Awesome loc. Must see. 10449 Canyon Oak Cir. Miller & Co. 566-7922.  
SANDY 3 bdrm, 2 ba, 2 b, 2 tpic, \$1150/mo. 518-4833, 463-2770  
SANDY, imbl, 3 bdrm, carpet, no pets/smoke, \$850 mo, \$600 dep. 422 E. 10230 S. Richard 571-7180  
SANDY 3050 sq. ft., 2 car gar, new carpet/paint, 6 bdrm, 3 ba, 2 tpic. \$1,300. Stephen, 484-3446  
SANDY 3 bdrm, 3 ba, 2 car gar, \$1,150. no pets/smoke, 576-9530  
SANDY 4 bdrm, 1 1/2 ba, \$1,000. 860 E. 8600 S. 561-2097; 295-5289  
SANDY 3 bdrm 1 ba, fully fenced yard, hardwood floors, 990, 495-9026  
SANDY 3 bdrm, 2 ba, large back porch, fenced, \$1,095. 568-4622  
SANDY 4 bdrm, 2 ba, 2200 sqft, 2 car gar, \$1,100 mo. 415-397-1177  
SANDY - 3 bdrm, fenced yard, beautiful home, \$975. 566-8703  
SANDY 3 bdrm, nice neighborhood, large yard. \$995. 463-3840  
SANDY - DOG OK! 4 bdrm, 2 ba, 2 car, fenced yd. \$1,350. 626-7064  
SANDY Immac 5 bdrm, 2 kitchens, gar 1442 E. 8685 S. \$1600 264-8672  
SOUTH-SL 215 E. Inman Ave. Charming 2 bdrm, hardwood, tpic \$750/mo gas paid 485-8331  
SOUTH-JORDAN 6 bdrm/2 1/2 ba, 1/2 acre, 2 car gar, dead end, \$1300/mo or \$1250/mo direct deposit, pyrnt \$1000 deposit, no smoke/pet 231-9753/209-7524

4 bdrm, 2 ba 1 car gar, \$825. Realty Brokers Wager 261-4444 BHO  
TAYLORSVILLE 4841 So. 3475 West. 3 bdrm, \$1,075/month. 968-8063 or see parkerproperties.com  
TAYLORSVILLE 10 HOMES \$625 + GET A LIST AT EXPRESS 261-4433  
TAYLORSVILLE Nice 3 bdrm, 2 ba, no pets/smoke. \$885. 969-1309  
UNIVERSITY 9 bdrm, or 5/4 bdrm, perfect for students and others. completely remod. \$2,295/mo. Call 484-6314.  
UNIVERSITY AREA - 4 bed, 2 bath, garage, 750 E. Fitzhugh. \$1295/mo. Miller & Co. 566-7922  
UNIVERSITY 936 E. 435 S. \$655 mo. 2 bdrm, new paint/floor. Fenced yard Pets OK. 466-3123. Agent  
UNIVERSITY 4 bdrm, fenced. Pets ok. Wood flrs. \$1150/mo. 364-6633  
UNIVERSITY - 2 bdrm. No pets/drink/smoke. \$750/mo. 363-7307  
**YOU CAN SELL ANYTHING WITH A CLASSIFIED AD! DIAL 237-2000**  
UNIVERSITY 20 HOMES \$650 AND UP GET A LIST AT EXPRESS 261-4433  
UNIVERSITY 524 S. 1030 E. 4 bdrm, 2 ba. No pets. \$1050. 359-5622  
UTAH County, Fairfield home prop. 6 bdrm, 2 ba. 3600 sq. ft. on 12 acres, hay barn, corals, \$1300 mo. lease option. 801-557-1339.  
WEST-JORDAN, Beautiful newer 4 bdrm, 3 bath in great neighborhood. Shows brand new. 1378 W. Highland Hollow Drive (7500 S.). \$1300/mo. Call Troy at Coldwell banker Premier Property Management 971-5990  
WEST-JORDAN, Upscale 2 Story \$1450. 1 Yr. old, 4 bdrm, 2 1/2 ba, 4500+ sq.ft., brick/stucco, main flr. master suite w/ pvt. den up, garden blt/glass shower, walk-in closets. Prudential www.prud.com 288-7254  
WEST-JORDAN - PETS/SMOKE OK! 7625 S. 2415 W. 4 bdrm, 2 ba, mechanic's dream old garage, special discounted \$895. Call Doug 565-9700 Sherlock of Homes  
WEST-JORDAN 3 bdrm, twinhome, pvt. yard. \$800-\$815/mo. \$600 dep. 4570 W. Barington (9025 S.). Pets nego. Becky 280-0526  
WEST-JORDAN, new home cul-de-sac, 5 bdrm, 3 ba. Huge fenced yard, central air, tpic. Yr parking. Avail. 8/1. \$1,400 + dep. 280-4445  
WEST-JORDAN 4200 sq. ft. house, 5 bdrm, 2 bath, \$1200. 280-3740/835-8900. See at 4655 W. 8450 South.  
WEST-JORDAN \$825. 4 bdrm, fam rm, 1349 W. 7125 S. owner/agent. 571-8848.  
WEST-JORDAN, gorgeous, 4 bdrm, 2 liv. room, 2 ba, 2 car gar, new carpet/paint, etc. \$1100. 280-5411  
WEST-Jordan multi level 3 bdrm, 1 3/4 ba, family rm, air garage, fenced, \$1,050 966-3168  
WEST-JORDAN 7 bdrm, 2 car gar, Quiet. Call 7 am-9 pm. 569-1766  
WEST-JORDAN 3 HOMES \$750+ GET A LIST AT EXPRESS 261-4433  
WEST-JORDAN, Rent to Own, 3 bdrm, 2 ba, \$1600. rent credit. 565-0984  
WEST-VALLEY HOME: 4 bdrm, 2 bath, 2 car garage. 6880 W. 4065 S. \$1195.  
SANDY HOME: 5 bdrm, 2 bath, 2 car garage. 787 E. Pinewood Dr (7890 S.) \$1295.  
WEST VALLEY HOME: 3 bdrm, 2 bath, 2 car garage. 4631 W. Dunsmore (2965 S.) \$950.  
KEARNS HOME: 3 bdrm, 2 bath, 2 car garage. 5457 W. Lewis Clark Dr. (5120 S.) \$1195.  
RIVERTON HOME: 4 bdrm, 2 bath, 2 car garage 12063 S. 1350 W. \$1200  
CLEARFIELD HOME: 3 bdrm, 1 tpic, 546 E. 350 S. \$875  
COTTONWOOD CONDO Finished 3 bdrm, 2 bath, 2 car garage, utilities paid 7833 S. Honeywood Hills Ln \$1350  
CENTERVILLE CONDO 2 bdrm, 2 bath, 1 car garage 63 E 820 S. \$750 Available July 15  
OGDEN DUPLEX, 3 bdrm, 2 bath 2727 Jackson Ave. \$650  
Call Phil Bleh (801) 599-4836

monthly. 575-1811; 252-5514  
DOWNTOWN, Fantastic view! 2 bdrm, 2 bath, office, washer, dryer, deck. \$950. Dobson Assoc. 860-4113.  
DOWNTOWN, 2 bdrm, 2 ba, washer/dryer, 1 car gar., no pets/smoke. \$825. Avail 8/1. 582-8589  
DOWNTOWN, Newer 3 bdrm, 2 bath, deck, air, washer, dryer, \$950. Dobson Assoc. 860-4113.  
DOWNTOWN 127 So. 800 E. Nice 2 bdrm, laundry, pkg. \$525/mo. SAFEGUARD MGMT. 566-9339  
DOWNTOWN-BELVEDERE 29 S. State, 1 bdrm, 484-5784 for information  
EMIGRATION CANYON AREA - 2 bed, 3 bath, secured parking, \$950/mo. Miller & Co. 566-7922  
FOOTHILL, New, 3 bdrm, 2.5 ba, full unfinished basement, 2250 sq. ft., 2 car gar. \$1250 801-209-3855; 201-1001  
FORT UNION 2 bdrm, 1 ba, \$675 luxury, up-dated condo w/huge kitchen. Full amen, pool, wash/dry incl. Jenny 455-3037  
FORT UNION/Shadow Ridge, 2 bdrm, 2 bath, htps, fireplace, deck, covered pkg. \$775/mo. \$500 dep. No pets/smoke. 523-2533  
FT. UNION- The Orchard, 2 bdrm/1 ba, wash/dry incl., covered pkg, amenities, no smoke, \$700/\$350 dep. 435-336-4229/801-277-4440  
HOLLADAY - Charming Townhome for rent! Remodeled 2 bdrm, 1 1/2 bath, \$800/mo. Open House Sat 7/15, 12-4. 2118 E. 3300 S. (435) 657-9595 Terrie  
HOLLADAY 1462 E. Fairboro Dr. #2 (\$640 Sq.) \$795. 2 bdrm, 2 bath, wash/dry incl, 2 car parking. No pets/smoke. PROPERTY MGMT. SYSTEMS 262-3900  
HOLLADAY - 3 bdrm, 2 ba, 2400 sq. ft., large rec. room, tpic, up down, no pets. \$1,050. 2334 E. Fisher Ln (2940 S.) 485-4525 appl.  
HOLLADAY - Cottonwood Mall \$620. Big 2 bdrm, top flr., wash/dry, clean, bright, newly remod. no pets. \$657-9882 Owner agent.  
HOLLADAY Min. view, new 3-4 bdrm. Luxury master bdrm, 2.5 ba, tpic., tile/hardwood, jet tub, 2 car gar. No smoke/pet. \$1450. 266-5459  
HOLLADAY WOW! Beautiful, new, 2 bdrm, 2 ba, vaulted ceilings, hwd/ble floors, washer/dryer, gated community, \$999 274-2622  
HOLLADAY Afx La Chapelle, 2 bdrm, 2 bath, amenities, \$650 incl heat/air. DOBSON ASSOC. 533-8551  
HOLLADAY 2 bdrm, 2 ba, tpic., balcony, lg. yard, washer/dryer incl. \$725/mo. 281-1350  
HOLLADAY 2 bdrm. No smoke/pets. \$525. Mary, 278-2929; Sarah 485-8433  
HOLLADAY, 2 bdrms, 2 baths, air, dishwasher, hook-ups. No smoke/pets. \$750 plus dep. 467-5803  
HOLLADAY Condo, 4 bdrm, /3 ba, 273-8872. No smoking. pets \$1050. www.vrmanet.com/rent  
HOLLADAY RENT WITH OPTION TO BUY 2 bdrm, 2 ba, new carpet, a/c, \$575. 272-9633  
HOLLADAY, 2 bdrm. Special disc. for long term lease. \$60-9377.  
HOLLADAY 1rg 1 bdrm, air, 2220 E. 4800 S. #159. 3575. 264-6472  
HOLLADAY 1rg, clean 2 bdrm, 1.5 ba, \$700. Bonded Realty 359-7979  
MIDVALE (East) only 3 left new town homes, 3 bdrm, 3 bath, 2 car garage. Please call Doug at 243-7020, or Viki 597-3520  
**PELL COMPANY**  
REAL ESTATE BROKER INC.  
255-0143  
MIDVALE - 3 bdrm, 2 ba, fireplace, 2 car gar, deck, great location. \$985/mo. 568-1831  
TO PLACE YOUR CLASSIFIED AD 237-2000  
MILLCREEK for rent, remod. 2 bdrm home \$800/mo, and 1 yr. old 3 bdrm, 3 ba, twinhome, \$1400/mo Doug 243-7020; Viki 597-3620  
**PELL COMPANY**  
REAL ESTATE BROKER INC.  
255-0143  
MILLCREEK 2 bdrm, 2 ba Wash/dry, pool, covered patio, central air \$750/mo. \$500 dep 264-4511

Maplets. Call 964-6669  
TAYLORSVILLE Crosspointe, 1 bdrm, 1 car gar, wash/dry, small yd, 2 pools, \$550. 485-8709/792-1542  
TAYLORSVILLE - Newly remod. 1200 sq. ft. 2 bdrm. Townhouse. 2.5 ba, pool, extras. \$750/mo. 943-6452  
TAYLORSVILLE 2 bdrm, newly remodeled, A/C. \$575. 856-1334  
TAYLORSVILLE 2 bdrm. townhouse 1 ba, gar, pool, air \$725. 969-7653  
THREE FOUNTAINS EAST, 2800 sq. ft. Condo. 2 bdrms, 2 baths, 2 car gar, corner unit, master suite, pool and amenities. 938 e. 5000 S. \$1295/mo. Call Troy at Coldwell Banker Premier Property Management, 971-5990.  
THREE FOUNTAINS East, Lovely 2 bdrm 2 ba, great loc. Fees paid. 466-2784  
UNIVERSITY HEIGHTS: Walk to I-2625. 2 bdrm, garage, secure bldg. Prudential www.prud.com 288-7254  
WEST-JORDAN New twin home, over 2100 square feet 3 bedroom, 2 1/2 bath, 2 car garage, \$1195/mo. 2238 W. 8490 S. Call 898-4466  
WEST-JORDAN 2 bdrm, 2 ba, beautiful loc. Next to schools/library \$669/mo. Call 801-572-2424  
WEST-JORDAN Condo 4 bdrm, 4 ba, 2 kitchens, 16 amenities, \$1055. Realty Brokers Wager 261-4444 BHO  
WEST-JORDAN, 3 bdrm, 2.5 ba, wash/dry incl. \$900 mo. 599-8699  
WEST-VALLEY  
  
WEST-VALLEY: Townhouse by Redwood Rd. 3 bdrm, 1.5 bath, central air, fridge, range, disposal, dishwasher, laundry rm, carpet, remodeled. \$750/mo. 1572 W. 3395 S. #4 566-7052.  
WEST-VALLEY \$645. 1 bdrm, 1 ba, luxury condo. Call 264-0945 ext. 139 www.4entel.com/p.c/m/7-276  
WOODS CROSS 3 bdrm, 1.5 ba, private yd, htps, air, tpic., 1 car gar., no pets/smoke. \$800/mo. \$800 dep. Must see! 792-9230  
ONLY \$550 PER MONTH Newly remodeled condo in East Murray. 2 bdrm, 1 bath, great location. This month only! Call 266-2999. CINDY WOOD REALTORS  
5325 SOUTH 580 East, Creekside East #8, 1 Bdrm., ground level, gas pd., carpet, laundry facilities. \$490. 272-8405. Precept  
765 E. THREE FOUNTAINS Ck. (4900 S.) 3 bdrm/2 bath, 2,000 sq. ft., carpet, htps, no pets. \$950. 272-8405. Precept  
130 SOUTH 13TH E. University Heights. Furnished 1 bdrm., garage, no pets. \$600. 272-8405. Precept  
**2 - 4 Plex units for Rent**  
AMERICAN FORK - 3 bdrm, 2 bath duplex, 1,400 sqft., large 2 car gar. 2 bonus rooms, lg. yard. Avail. 8/1. \$1,000 mo. plus dep. 763-7673.  
AVENUES 2 bdrm. Hardwood floors  
**DUPLEX LOCATOR - ALL AREAS**  
**OVER 3000 RENTALS**  
WWW.EXPRESSRENTALS.COM  
FAX or EMAIL  
\$325 1 Bdrm. Hookups, Fireplace. \$400 2 Bdrm. Carpet, Htps. \$400 1 Bdrm. with Garage, Air \$425 2 Bdrm. Pet OK, Air, Hookups \$450 2 Bdrm. Pet OK, Hookups, Air \$495 2 Bdrm. Fence, Garage, Pet ok \$575 3 Bdrm. Side-by-Side Duplex \$600 3 Bdrm. 2 Bath has Garage \$725 3 Bdrm 2 Gar., Pet OK \$800 3 Bdrm 2 Bath, 2 Gar., Fence  
**EXPRESS RENTALS 261-4433**  
OFFICE AT 124 EAST 3900 SOUTH  
AVENUES Upper 1500 sqft 2 bed-room, Newly remod. new kitchen, carpet, paint, patio, pvt. entrance, quiet neighborhood, utils. included, cable, wash/dry, storage. 364-7797/days, 596-1497/eve  
AVENUES Charming 279 E. 5th Ave 1 bdrm. Coin-op laundry \$375. Realty Brokers Wager, 261-4444 BHO

HOLLADAY: DASHING, 2 bdrm, fenced, workshop, storage, garden, \$675 For Appt. 451-7536.  
HOLLADAY 1rg 3 bdrm, 1.5 ba, wash/dry, carpet. No smoke/pet. \$750. (435) 647-3796; 598-3326  
HOLLADAY: 4604 S. 1300 E. Luxury 3 bdrm., 3 ba, unit, \$1250/mo. \$1000 dep. 272-2545.  
HOLLADAY, 3 bdrm, 1 ba, quite, no pet/smoke \$700/mo. 566-7075  
HOLLADAY 1 bdrm, gas paid, free laundry. \$495/\$465. 916-1950.  
HOLLADAY- 2 bdrm, side duplex, htps., carpet. No pets. 263-9305.  
HOLLADAY: Darling remod. 2 bdrm, hookups, carpet, \$650. 288-0100.  
HOLLADAY 26 DUPLEXES \$500+ GET A LIST AT EXPRESS 261-4433  
HOLLADAY New point 2 bdrm, carpet, htps, no pets \$650. 272-3120  
JUDGE AREA - duplex, 1 bdrm, unit \$475 + dep. 3 bdrm units \$750 + dep. Nice units, nice neighborhood (435) 882-5227  
LIBERTY PARK DUPLEX - Nice remodeled 3 bed, 1 bath, new kitchen, new bath, new paint, new carpet, W/O hookups, central air, fenced yd, pet friendly, \$745 per month plus utils. 1444 South 200 East Robert 580-8280 / Owner Broker  
LIBERTY Park nice duplex, 1g. 1 bdrm with bsmt., wash/dry, a/c, \$525. Big 2 bdrm, remodeled yd, wash/dry, a/c, \$625. 1-800-332-3993  
LIBERTY PARK 1 bdrm, furnished cozy duplex. 467-3930, call Bud.  
MAGNIA 1 bdrm. Washer htps. \$475 Pets/smoke ok. 414-8449; 414-8471  
MAGNIA 7 DUPLEXES \$400 AND UP GET A LIST AT EXPRESS 261-4433  
MIDVALE Cottage, 1 bdrm, 1 bath, hookups, pvt. yard. Clean, Cute. \$600. 7676 S. Holden St. (830 W.) 641-8986. We check credit.  
MIDVALE duplex, 2 bdrm, new carpet, tile floors, nice area \$600/mo Call Steve 949-7443  
MIDVALE 3 bdrm, 2.5 ba, 2 car gar. fenced. Nice. \$675. 255-6599  
MIDVALE 18 DUPLEXES \$450 AND UP GET A LIST AT EXPRESS 261-4433  
MIDVALE 1 or 2 bdrm, no pets, htps., includes heat. 561-2449  
MILLCREEK quiet 1 bdrm, 1 ba, washer/dryer htps. Small yard, no smoking/pets, good loc. \$500 mo. 296-1068.  
MILLCREEK, 2 bdrm, fenced yard, auto gar, large storage, disposal. \$850 277-2503  
MILLCREEK large 2 bdrm, hookups, tpic. carpet. no smoke/pets, \$660 utils paid. 265-8429  
MILLCREEK 4 bdrm/1 1/2 ba, no smoke/pet, \$750 mo., 641-9430  
MURRAY 4531 S. 700 E. #A, 2 bdrm, 1 bath, twinhome w/rep/cease, washer/dryer hookups, covered parking, no pets. Available immediately. rent \$595/month, deposit \$595. Call 566-8111 ask for Victor. ERA CARLSON, REALTORS  
MURRAY Townhouse, 2 bdrm, 1.5 bath, tpic., garage, hookups, 2 patios with large enclosed yard. 4331 S. 500 E. #8. 311-2105  
MURRAY 2 bdrm, 1 ba, 2 car gar., fireplace, htps., \$770 includes utils. Small pet ok. 266-0356  
MURRAY 2 bdrm, 1 ba, storage, htps, no pets. \$625 mo. \$500 dep. 1st mo. \$600. 598-6770.  
MURRAY 4 bdrm, fam. room, 2 car gar., 6709 S. Acacia Rd. \$950 mo., 809-1908  
MURRAY Executive 3 bdrm, w/ fireplace, on stream, \$925. 531 E. 5300 S. 272-5752. 403-3900  
MURRAY, 5900 S. 240 E. Townhouse 6 plex 2 bdrm, 1.5 ba, new paint. No pets. \$640. 567-0958  
MURRAY 12 DUPLEXES \$400 AND UP GET A LIST AT EXPRESS 261-4433  
MURRAY PARK 765 E. 2700 S. (up) \$750. 3 bdrm, 2 ba, garage, htps, lg. rooms. No smoke/pets. PROPERTY MGMT. SYSTEMS 262-3900  
NORTH SL 245 W. Ardmore Place, (350 No.) Upside! duplex apt. 4 bdrm, 1.5 ba, big back yard, remod. kitchen, carpet, bath in washer, dry. \$900. Tenant will show all. 5pm then call 272-1423  
NORTH SL Clean 3 bdrms., new carpet/paint, hookups, covrpt. pkg. No smrr. 272-1423  
ROSE PARK water r DA

parking, nail on tree No smoke/pets. Jim  
SUGAR HOUSE \$410. parking. 528 E. Elm Valens, CDA Prope  
SUGAR HOUSE 2 bdrm no smoke/pet, 3 Cranall (2920 S.) 9  
SUGAR HOUSE 3 bdr dated, wash/dry, tpic. \$800/mo + de  
SUGAR HOUSE: Curb bdrm, fireplace, bar For appt call 451-75  
SUGAR HOUSE: Duplex bdrm., garage, A/C, dryer. 1100 sq. ft. \$61  
SUGAR HOUSE: Mod hwd, gar. 981 E. Log S.) \$630. 272-6752  
SUGAR HOUSE: Quaint wash/dry, barn, 1/2 washer A/C, \$595  
SUGAR HOUSE: 2 bdrm 1.5 ba, A/C. \$600/m  
SUGAR HOUSE: 2 bdrm sq. ft. duplex. \$650/m  
SUGAR HOUSE: 2 bdrm, new carpet, \$775.7  
SUGAR HOUSE: 3 bdrm baml., yard, lease. \$8  
SUGAR HOUSE: 27 DU GET A LIST AT EXPRE  
SUGAR HOUSE: Historic tpic., new tile, \$50  
SUGARHOUSE 2bdrm/2ba, catht htps, air, range/ht \$750 mo., not pets  
SUGARHOUSE: 3 b wash/dryer \$1050,  
TAYLORSVILLE 2 BDRM PETS. \$500 DEP \$625!  
TAYLORSVILLE LRG \$500/mo, 2400 dep. S. 1250 W. 588-9128  
TAYLORSVILLE 2 bdrm yard, Call 7 am-9 p  
TROYLEY Sq. Area - 21 1100 sq. ft. \$650/ Lowell Ave. Miller &  
UNION PARK, 2 bdrm garden unit, all the e \$680. 1087 E. South (7335 S.) 599-8949 /  
UNION PARK 2 bed/1 pets. 274-8787.  
UNIVERSITY 1 bdrm point and tile, Nice \$465 plus util. 583-  
UNIVERSITY 963 S. 80 fice/small bath, w Realty Brokers Wage  
UNIVERSITY, Sharp, r hookups, air, htps, month free, \$500.  
UNIVERSITY - 3 bdr \$900 heat paid. 560  
UNIVERSITY, 1 bdrm, yard, \$490. Owner o  
UNIVERSITY, 1 bdrm, frs. A/C, \$470 835-3  
UNIVERSITY 2 bdrm., Prudential www.prud  
UNIVERSITY 23 DU GET A LIST AT EXPRE  
UNIVERSITY: VIEW 3 bdrm, 2 ba, \$1  
WEST-Jordan 3 bdr, car, central air, \$1,000 mo. \$800 c  
WEST-JORDAN - cr \$750/mo. 563-96  
WEST-JORDAN-new 3 ba, 4 car gar. \$  
WESTMINSTER - very 2 bdrm, 1.5 ba patio, carpet, \$1700 S. \$760/mo  
WEST-VALLEY - RIVER 2 BDRM. DU! tpic., 1-1/4 bath, ref., dishwash wash/dry htps. Fer storage. Access to 2353 S. 1480 V "ASK ABOUT O CONSTRUCT  
WEST-VALLEY, 2 wash/dry hook-ups, cc 694-1141 or 6650

Tab 12

SALT LAKE CITY HEALTH DEPARTMENT

HEALTH REGULATIONS

#3

HOUSING

Adopted by the Salt Lake City-County  
Board of Health

June 4, 1981

Under Authority of Section 26-24-20  
Utah Code Annotated, 1953, as amended

CERTIFIED OFFICIAL COPY  
SALT LAKE CITY-COUNTY HEALTH DEPARTMENT

By \_\_\_\_\_  
Director



## 1.0 DEFINITIONS

For the purposes of these regulations, the following terms, phrases, and words shall have the meanings herein expressed:

1.1 Accessory Building: A detached building or structure that is not used or intended to be used for living or sleeping by human occupants and is located on or partially on any premises;

1.2 Apartment House: Any building or part thereof that is designed, built, rented, leased, let, or hired out to be occupied or is occupied as the home or residence of three or more families living independently of each other;

1.3 Basement: The part of a building that is wholly or partially below ground level with a vertical space from floor to ceiling of at least 4 feet (1.22 meters);

1.4 Bedding: Sheets, blankets, quilts, other bed covering, pillows, pillowcases, mattresses, and springs;

1.5 Crawl Space: Any part of a building below the rafters with a vertical space from floor to ceiling of less than 4 feet (1.22 meters);

1.6 Department: The Salt Lake City-County Health Department;

1.7 Director: The Director of the Salt Lake City-County Health Department or his authorized representative;

1.8 Dilapidated: A building or structure or part thereof that by reason of inadequate maintenance, structural deterioration, obsolescence, or abandonment is unsafe, unsanitary, or constitutes a hazard and is no longer adequate for its original intended purpose or use;

1.9 Dormitory: A group of rooms in a dwelling used for institutional living and sleeping;

1.10 Dwelling: Any building or shelter or part thereof that is intended or used for human habitation;

1.11 Dwelling Unit: A room or group of rooms located within a dwelling forming a single habitable unit with facilities intended or used for living, sleeping, cooking, or eating any combination;

1.12 Emergency Housing: Structures utilized for occupancy in

an emergency that are designated by governmental authority as emergency housing;

1.13 Extermination: The control and elimination of pest infestations by eliminating their harborage; removing or making inaccessible materials that may serve as their food; or poisoning, spraying, fumigating, trapping; or any other recognized and legal pest elimination methods approved by the Department;

1.14 Fire Hazard: Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the Chief of the Fire Department or his authorized representative or the Director, may cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion;

1.15 Garbage: The animal and vegetable waste resulting from the handling, preparing, cooking, serving, and consumption of food;

1.16 Habitable Room: An enclosed space used or intended to be used for living, sleeping, cooking, or eating; and excluding bathrooms, water closet compartments, laundries, furnace rooms, pantries, kitchenettes, dinettes, utility room, workshops, hobby and recreation areas of less than fifty square feet (4.65 square meters) of floor space, foyers, communicating corridors, stairway, crawl spaces, closets, and storage spaces;

1.17 Hot Water: Water heated to a temperature of not less than 120° F (40° C) at the outlet;

1.18 Mobile Home: Any vehicle or portable structure with or without wheels that is designed or constructed to permit occupancy as a dwelling;

1.19 Multiple Dwelling: Any dwelling containing more than two dwelling units;

1.20 Occupant: Any person who alone, jointly, or severally with others:

- (a) has legal title to any premises, dwelling, or dwelling unit, with or without accompany actual possession thereof; or
- (b) has charge, care, or control of any premises, dwelling, or dwelling unit, as legal or equitable owner, agent of the owner, lessee, or is an

executor, executrix, administrator,  
administratrix, trustee, or guardian of the estate  
of the owner;

1.22 Person: Any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institution, bureau, agency, county, city, political subdivision, or any legal entity recognized by law;

1.23 Premises: Any lot, parcel, or plot of land, including any building(s) or structures thereon;

1.24 Refuse: Garbage, trash, or other discarded material;

1.25 Rodent Harborage: Any conditions or place where rodents can live, nest, or seek shelter;

1.26 Rodentproofing: A form of construction or action that will prevent the ingress or egress of rats to or from a given space or building or from gaining access to food, water, or harborage. It consists of closing and keeping closed every opening in foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs, sidewalk gratings, sidewalk openings, and other places that may be reached and entered by rats by climbing, burrowing, or other methods, by the use of materials impervious to rat gnawing or other methods approved by the Department;

1.27 Rooming House: Any dwelling containing one or more rooming units in which space is rented, let, leased, or hired out by the owner or operator;

1.28 Rooming Unit: Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping but that does not contain cooking or eating facilities;

1.29 Rubbish: All solid waste except garbage and hazardous waste;

1.30 Utility Service: Electrical, gas, oil, water, sewer, and garbage service;

1.31 Vermin: A rat, mouse, cockroach, bedbug, or any other animal determined by the Department to be harmful to the life, limb, health, property, safety, or welfare of the public.

## 2.0 PURPOSE.

It is the purpose of these regulations;

2.1 To protect, preserve, and promote the physical and mental health and social well-being of the public;

2.2 To prevent and control the incidence of communicable diseases;

2.3 To reduce environmental hazards to health;

2.4 To regulate private and public owned dwellings for the purpose of maintaining adequate sanitation and public health;

2.5 To protect the safety of the public; and

2.6 To promote the general welfare by legislation that shall be applicable to all dwellings now in existence or hereafter constructed.

### 3.0 JURISDICTION OF THE DEPARTMENT.

All areas that relate to housing enumerated in Section 2.0 shall be subject to the direction and control of the Department.

### 4.0 SCOPE.

#### 4.1 Application.

- (a) The provisions of these regulations shall apply uniformly to the construction, alteration, repair, maintenance, use, and occupancy of all existing building, mobile homes, structures or parts thereof, designed, intended for use, or used for human habitation, irrespective of when or under what laws such buildings, mobile homes, structures, or portions thereof were originally constructed or rehabilitated.
- (b) If any dwelling or part is used or intended to be used as a combination apartment house-hotel, the provisions of these regulations shall apply to the separate parts as if they were separate dwellings.
- (c) Every rooming house shall comply with all requirements of these regulations for dwellings including additional rooming house requirements in Section 10.3.

#### 4.2 Relocation. An existing dwelling(s) that is moved or

relocated shall be considered a new dwelling(s) and comply with all the requirements of these regulations.

4.3 Unlawful Acts. It shall be unlawful for any person not to comply with any rule or regulation promulgated by the Department, unless expressly waived by these rules and regulations.

4.4 Exceptions. Any exceptions allowed by the Department to the requirements of these regulations shall be only by written approval of the Department.

#### 5.0 RESPONSIBILITIES OF OWNERS AND OCCUPANTS.

The division of responsibility between owners and occupants for maintenance, sanitation, and repair of dwellings or dwelling units shall be as follows. Any person violating any duty imposed by these regulations shall be liable for that violation(s) even though an obligation also may be imposed on others and even though a contract has imposed on others the duty of complying with these regulations.

5.1 Occupying or letting of Unfit Dwelling or Dwelling Unit Unlawful. No owner, occupant, lessee, or other person shall occupy, let to another person, or permit occupancy of any dwelling or dwelling unit unless it and the premises are safe, clean, sanitary, in good repair, fit for human occupancy, and in compliance with these regulations and all other appropriate legal requirements.

5.2 Failure to Maintain Dwelling or Dwelling Unit Unlawful. No owner, manager, or lessee of any dwelling or dwelling unit shall permit or allow any floors, floor coverings, ceilings, doors, or walls of any dwelling or dwelling unit to become dirty, foul, or in a state of disrepair. If the said areas are dirty, foul, or in a state of disrepair and cannot be reasonably cleaned, the Director may require the owner to refinish, repaint, or repair. If circumstances indicate the said undesirable conditions have been unreasonably caused by the occupant, the Director may require the occupant to comply with the provisions of this paragraph.

5.3 Maintenance of Shared or Public Areas Required. Every owner of a building containing two or more dwellings or dwelling units shall maintain clean and sanitary the shared or public areas of dwellings or dwelling units and premises.

5.4 Maintenance of Dwelling or Dwelling Unit and Premises Required. Every occupant of a dwelling or dwelling unit shall

maintain safe, clean, and sanitary the part(s) of the building, dwelling, dwelling unit, and premises he occupies or controls or both.

5.5 Storage and Disposal of Refuse Required. Storage and disposal of refuse shall be done in a clean, sanitary, and safe way and in accordance with the solid waste regulations of the Department.

5.6 Supply of Refuse Containers Required. Every owner of a multiple dwelling shall supply facilities or refuse containers for the sanitary and safe storage or disposal or both of rubbish and garbage. In single or two family dwellings or dwelling units, it shall be the responsibility of the occupant(s) to furnish such facilities or refuse containers.

5.7 Hanging of Screens and Repair of Windows and Screens Required. The owner of a dwelling or dwelling unit shall be responsible for providing and hanging all screen, except if there is a written agreement between the owner and occupant for the occupant to provide or hang screens. In the absence of said agreement, maintenance or replacement of screens, storm doors, and windows, once installed by the owner in any one season, becomes the responsibility of the occupant for that season.

5.8 Extermination of Insects and Rodents Required.

- (a) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of vermin therein or on the premises.
- (b) Every occupant of a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested.
- (c) Notwithstanding the foregoing provisions of this subsection, if infestation is caused by failure of the owner to maintain a dwelling or dwelling unit in a pestproof condition, extermination shall be the responsibility of the owner.
- (d) If infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of

the owner.

5.9 Prevention of Rodent Harborages Required. The owner or occupant of a dwelling or dwelling unit shall not accumulate rubbish, boxes, lumber, scrap metal, or any other materials in a way that may provide rodent harborage in or about any dwelling or dwelling unit or its premises, including, but not limited to shared or public areas. Stored materials shall be neatly stacked in piles elevated at least eighteen inches above ground level. No stacking or piling of materials shall take place against the exterior walls of the structure.

5.10 Prevention of Substances for Rodent Food Required. The owner or occupant of a dwelling or dwelling unit shall not store, place, or allow to accumulate any materials that may serve as food for rodents in a site accessible to rodents.

5.11 Sanitary Usage of Fixtures and Facilities Required. Every occupant of a dwelling or dwelling unit shall keep all fixtures and facilities clean and sanitary and be responsible for reasonable care in their proper use and operation.

5.12 Maintenance of Appliances and Furnishings Required. If appliances and furnishings are supplied by the owner, they shall be installed and maintained in good repair by the owner.

5.13 Hot and Cold Water Required. Every owner of a dwelling or dwelling unit or both shall provide adequate hot and cold running water for every kitchen sink, bathroom lavatory, bathtub, and shower.

5.14 Prevention of Toxic Substances Required. Every owner of a dwelling or dwelling unit shall provide and maintain the dwelling or dwelling unit free of health hazards due to the presence of toxic substances, including lead based paint.

5.15 Control of Drainage of Standing Water is Required. Every premises shall be graded and drained of standing water and maintained clean, sanitary, and safe by the owner. The owner shall not allow water to stand beneath or in building. This does not preclude the presence of fish or ornamental ponds or lakes.

5.16 Owner and Manager Identification Required. Every multiple dwelling containing sixteen or more units shall have a manager residing on the premises. Every multiple dwelling containing less than sixteen units shall have either a resident manager or a notice posted in a conspicuous place with the name, address, and telephone number of the owner, his manager, or

agent. All hotels and motels shall have a resident manager.

5.17 Vacated Building or Premises To Be Left In a Sanitary Condition. No person shall vacate or move from any dwelling, dwelling unit, storeroom, or other structure unless all junk, including junk vehicles, garbage, rubbish, and refuse are removed from the structure(s), premises, and grounds appurtenant thereto; nor shall any person fail to place the premises in a sanitary condition within twenty-four hours after the premises are vacated.

5.18 Duties of Owner(s) Upon Vacating. If any dwelling, dwelling unit, storeroom, or other structure is vacated and the occupant is unavailable, the owner(s) shall remove all junk, including junk vehicles, garbage, rubbish, and refuse from the structure(s), premises, and grounds appurtenant thereto, placing the same in a sanitary condition within ninety-six hours after the premises are vacated.

5.19 Interruption of Utilities Prohibited. No owner, manager, occupant, or other person shall cause or permit any utility service to be removed, shut off, or discontinued for any occupied dwelling or dwelling unit let or occupied by him, except for temporary interruption while repairs or alterations are in process or during temporary emergencies when discontinuance of service is approved by the Director. This shall not be interpreted as preventing a utility from discontinuing utility service for nonpayment or other reasons allowed by law.

5.20 Improper Occupancy Not Allowed. The occupancy of any building or structure or part thereto for living, sleeping, cooking, or dining is prohibited if:

- (a) The building or structure was not intended to be used for such occupancy; or
- (b) The building or structure is dilapidated.

## 6.0 DENSITY AND SPACE REQUIREMENTS.

6.1 Limited Occupancy Per Unit of Space Required. The occupancy of any dwelling or dwelling unit shall meet the following requirements:

- (a) For the first occupant there shall be at least one hundred fifty square feet (13.95 meters) of floor space.
- (b) There shall be at least one hundred square feet



(9.3 square meters) of floor space for every additional occupant.

- (c) Floor space is to be calculated on the basis of habitable rooms only.

6.2 Required Floor Area Specified. Every dwelling unit shall have at least one room that has not less than one hundred fifty square feet (13.95 square meters) of floor area. Other living, sleeping, or eating rooms, except kitchens, shall have an area of not less than seventy square feet (6.51 square meters). If more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at rate of fifty square feet (4.65 square meters) for each occupant in excess of two.

6.3 Required Ceiling Height Specified. Ceiling heights of dwellings and dwelling units shall comply with requirements of the Uniform Housing Code, latest edition.

6.4 Required Bathroom and Kitchen Facilities for Nonlicensed Dwellings Specified. The following requirements of this subsection apply to all dwelling units except hotels, motels, rooming houses, dormitories, and mobile homes and recreational vehicles within a mobile home park or a recreational vehicle park.

- (a) Every dwelling unit shall contain a room(s) that is equipped with a water closet, basin, bathtub, or shower or both in good working condition and properly connected to an approved water and sewer system. All basins, bathtubs, and showers shall be properly connected so an adequate amount of hot and cold water may be drawn. The basin shall be conveniently located to the water closet.
- (b) Every dwelling unit, except rooming units, shall be provided with a kitchen that contains an approved kitchen sink in good working condition and properly connected to an approved water and sewer system. No sink, sink rim, or counter top of absorbent material shall be permitted. Cabinets or shelves shall be provided for the storage of food and for eating, drinking, and cooking utensils. A counter or table for food preparation shall be provided. Cabinets, shelves, counter, or table shall be of sound construction and kept in good repair and finished with surfaces that are nonabsorbent and easily cleanable and that will not impart any toxic or harmful effect to food.

6.5 Adequate Water Heating Facilities Required. Every dwelling unit shall have water heating facilities that are properly installed, maintained, and in a safe and good working condition and are capable of providing an adequate amount of hot water that may be drawn at every required kitchen sink, lavatory basin, bathtub, or shower, except as provided in Section 10.1 and 10.3.

6.6 Limitations of Bathroom and Bedroom Location Specified: Access to any sleeping room shall not be through another sleeping room. Access to a water closet through a sleeping room shall be allowed only when other water closet facilities are available to occupants.

6.7 Privacy in Bathrooms Required. Every water closet, bathtub, or shower required by these regulations shall be installed in a room that will afford privacy to the occupant. A room containing a water closet shall be separated from food preparation or storage rooms by a tight-fitting door or wall.

6.8 Requirements for Habitable Basements Specified. No basement space shall be used as a habitable room, dwelling unit, or dwelling unless:

- (a) The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness.
- (b) The total window area in each room is equal to at least the minimum window area sizes required in Section 9.1 of these regulations.
- (c) The total openable window area in each room is equal to at least the minimum as required in Section 9.1 of these regulations, except if there is supplied some other device affording adequate ventilation and approved by the Director.
- (d) Total floor space requirements and required ceiling height are not less than the minimums required under Sections 6.2 and 6.3 of these regulations.

## 7.0 STRUCTURAL REQUIREMENTS.

7.1 Building Structural Requirements Specified. Every foundation, inside stairs, chimney, floor, exterior and interior wall, ceiling , roof, and all accessory buildings shall be weather and water-tight, insect and rodent proof, and in good repair. Outside stairs shall be kept in good repair.

- (a) All exterior wood surfaces other than decay resistant woods shall be protected from the elements and decay with paint or other protective covering or treatment.
- (b) Interior surfaces shall be painted or repainted if necessary to provide a clean and sanitary environment. Every water closet compartment, bathroom and kitchen floor, wall, and ceiling surface shall be constructed and maintained reasonably impervious to water to permit the floor, wall, ceiling, and water closet compartment to be easily kept clean and sanitary and to prevent possible seepage of overflow waste water from entering other parts of the dwelling.

7.2 Window and Door Requirements Specified. Every window, skylight, exterior door, basement hatchway, and other openings connected with habitable rooms shall be weather-tight, pest proof, and kept in good repair. Every interior door shall be kept in good repair. Every exterior door of dwelling units and single unit dwellings shall be provided with one or more locking devices so the door can be locked from both the inside and outside in conformance with local fire and building codes. Other potential trespass entrances shall be secured.

7.3 Access, Egress, and Handrail Requirements Specified. Every inside and outside stair, handrail, porch, and appurtenance thereto shall be of a quality that meets applicable building code standards under normal use and shall be kept in good repair.

- (a) Access to dwellings and dwellings units shall have operating locks to ensure privacy.
- (b) Access to or egress from each dwelling or dwelling unit without passing through any other dwelling shall be provided.
- (c) Every dwelling and dwelling unit shall have immediate access to two or more approved means of egress, appropriately marked in rooming houses, dormitories, hotels, and motels, leading to safe and open space at ground level as required by law.
- (d) Structurally sound handrails shall be provided on

any steps containing three or more risers. Porches, patios, landings, balconies, or other like structures that are located more than three feet (.92 meter) higher than the adjacent areas shall have structurally sound protective guardrails. Open guardrail and stair railings shall have intermediate rails or an ornamental pattern so that a sphere 9 inches (22.9 centimeters) in diameter cannot pass through.

7.4 Adequate Accessory Structure Requirements. Accessory structures, including, but not limited to shelves and cupboards provided by the owner(s) or other person(s) shall be structurally sound, maintained in good repair, and free of pests; or the structure(s) shall be removed from the premises. The exterior of such structure(s) shall be made weather resistant by the use of decay-resistant materials, paint, or other preservatives.

7.5 Adequate Fence Requirements. All fences, including masonry walls, shall be constructed of material approved by the Department, maintained in good condition, and not create a harborage for rodents. Wood materials shall be protected against decay with paint that is not lead-based or by other preservative material.

7.6 Rodentproofing Required. Every dwelling, dwelling unit, multiple dwelling, rooming house, or accessory building shall be rodentproof and the premises maintained free of rodent harborage.

## 8.0 SAFETY REQUIREMENTS.

8.1 Exits Required. Every dwelling and dwelling unit shall have unobstructed means of exit approved by the Department and leading to safe and open space at ground level.

8.2 Fire Equipment Required. Every dwelling and dwelling unit shall contain installed and maintained fire equipment that meets the applicable fire laws.

8.3 Combustible Materials Not Permitted. No combustible material shall be stored or kept beneath porches, interior or exterior stairways, near or in furnace rooms, by heat outlets, around hot water heaters, or close to any other source of combustion.

8.4 Safety of Equipment Required. Every supplied facility, piece of equipment, or utility shall be so constructed or installed that it will function safely and be maintained in a satisfactory working condition.

9.0 MINIMUM REQUIREMENTS FOR LIGHT, VENTILATION, HEATING, COOLING, PLUMBING.

9.1 Adequate Light Required. Every habitable room shall have at least one window or skylight facing outdoors; except it may instead have a window facing a porch or other similar area. Ten-foot candles of natural light shall be available through this inter-connection to all parts of the room three feet (.92 meter) above the floor. The minimum total window or skylight area for every habitable room shall be at least ten percent of the floor area of such room. If major light-obstructing exterior structures are located less than three feet (.93 meter) from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors and not included as contributing to the required minimum total window area.

9.2 Adequate Ventilation Required. Every habitable room shall have at least one window or skylight facing directly outdoors that can be opened easily or have other device(s) that ventilate the room adequately. The total openable window or skylight area in every habitable room shall be equal to at least forty-five percent of the minimum window area or minimum skylight type window size as required in Section 9.1 of this regulation, unless there is some other device giving adequate ventilation. All openable windows shall be provided with a screen in good repair that prevents the entrance of pests.

9.3 If facilities for climate control, including cooling or humidity or both, are provided in structures containing dwelling units or rooming units, the facilities shall be maintained and operated in a continuous manner when necessary to maintain a comfortable environment, and in accordance with the designed capacity of the installed equipment. During instances when the equipment is inoperative because of power or mechanical failure, alternative provisions for fresh air ventilation of each dwelling or rooming unit shall be provided.

9.4 Adequate Artificial Light or Ventilation Acceptable. Every bathroom, water closet compartment, and non-habitable room used for food preparation shall comply with the light and ventilation requirement for habitable rooms contained in Sections 9.1 and 9.2, except that no window or skylight shall be required in those rooms, if they are equipped with adequate artificial light and an adequate ventilation system in good working condition.

9.5 Adequate Heating Equipment Required. Every dwelling shall have heating equipment and appurtenances that are properly installed, and are maintained in a safe and good working condition. The equipment and appurtenances shall be capable of safely and adequately heating all parts of habitable rooms, bathrooms, and water closet compartments in every dwelling unit located therein to a temperature of at least 68° F (20° C) at a distance thirty-six inches (.92 meter) above floor level under normal winter conditions without overheating any of the rooms. If the temperature is controlled by a person other than the occupant, a temperature of at least 68° F (20° C) at a distance three feet (.92 meter) above floor level in the rooms shall be maintained without overheating any of the rooms. If age or illness of occupants or other special conditions exist, the Department may require a high temperature.

9.6 Adequate Heating Equipment Exhaust Vents Required. No owner occupant or other person shall install, operate, or use a heating device or hot water heating unit producing heat by combustion that is not vented to the outside of the structure in an approved way and is not supplied with sufficient air to continuously and adequately support fuel combustion. All heating devices shall be constructed, installed, and operated in accordance with the Uniform Building Code, current edition, and in a way that minimizes the possibility of accidental burns.

9.7 Adequate Electrical Service, Outlets and Fixtures Required. Where usable electrical service is readily available from power lines that are not more than three hundred feet (91.5 meters) away from a dwelling or dwelling unit, every said dwelling or dwelling unit and all public and common areas shall be supplied with electrical service, outlets, wirings, and fixtures that are properly installed and maintained in good and safe working condition in a way prescribed by laws of appropriate legal jurisdictions. All appliances shall be installed and maintained in a safe condition and in accordance with the National Electrical Code and the Uniform Building Code. The minimum capacity of services and the minimum number of outlets and fixtures shall be as follows:

- (a) Every habitable room and bathroom of a dwelling or dwelling unit shall contain at least 2 separate wall type electrical convenience outlets with fireplates or one convenience outlet and one ceiling type electric light fixture.
- (b) Every water closet compartment, laundry room, furnace room, and public hallway shall contain at least one supplied electric light fixture.

9.8 Adequate Lighting of Public Halls and Stairways Required. Every public hall and stairway in every multiple dwelling shall be adequately lighted by natural or artificial light at all times to provide in all parts at least ten foot-candles of light at floor or tread level. Every public hall and stairway in structures containing not more than two dwellings or dwelling units may be supplied with conveniently located light switches controlling the lighting system when needed.

9.9 Adequate Plumbing Fixtures, Water Pipes, and Waste Pipes Required. Every plumbing fixture, waste pipe, water pipe, and appurtenance shall be properly constructed and installed in conformance with the appropriate statutes, ordinances, and regulations of appropriate legal jurisdiction. All plumbing fixtures, waste pipes, and appurtenances shall be maintained in a sanitary working condition, and free from leaks, defects, and obstructions. No plumbing fixture, water pipe, waste pipe, or other device shall be connected or arranged in a such a way that it would be possible for nonpotable, used, unclean, polluted, or contaminated water or other substances to enter the potable water system under any condition. An approved, properly connected, and functioning pressure temperature relief valve shall be present on all water heaters, boilers, and other hot water apparatuses.

#### 10.0 ADDITIONAL STANDARDS FOR HOTELS, MOTELS, AND SIMILAR DWELLINGS.

In addition to other requirements of these regulations, no person shall operate a hotel, motel, rooming house, rooming unit, dormitory, or dormitory unit, or occupy let to another for occupancy the above housing, unless it is in compliance with the following:

##### 10.1 Hotels.

- (a) Water Closet, Basin, Showers or Bathtub Facilities Required. If private water closets, bathtubs or showers or both, or lavatory basins are not provided, there shall be on each floor for each sex a room containing at least one water closet and lavatory basin and one shower or bathtub or both, accessible from a public hallway. Additional water closets, lavatory basins, and showers or bathtubs or both shall be provided on each floor for each sex at at the ration of one for each additional ten guests or fractional

number in excess of ten. The facilities shall be clearly marked for either men or women and be in good working condition and properly connected to approved culinary water and sewer systems. Every lavatory basin and bathtub or shower or both shall be properly connected so an adequate amount of hot and cold water may be drawn.

- (b) Adequate Kitchen Facilities Required. If an occupant is permitted to cook in a hotel unit, a space for kitchen facilities shall be provided and equipped with a kitchen sink installed in accordance with the requirements of the Utah Plumbing Code. The sink shall be properly connected so that an adequate amount of cold and hot water may be drawn. All multiple-use eating and drinking utensils, pots, pans, and other containers shall be washed, sanitized, and protected from contamination. Single service items shall be stored and dispensed in a sanitary way. The owner or manager shall ensure that the stove, refrigerator, and other surface areas are maintained clean and sanitary and are clean prior to letting any room to a new occupant. Cabinets or shelves shall be provided for the storage of food and for equipment and utensils for eating, drinking, and cooking. A countertop or table for food preparation shall be provided. Cabinets, shelves, counter(s), and table(s) shall be of sound construction, furnished with surfaces that are nonabsorbent, easily cleanable, and constructed so they will not impart any toxic or harmful effect to food. If cooking is not permitted, it is the responsibility of the owner or manager to ensure compliance.

- (c) Clean Bedding and Linens Required. The owner or operator of every hotel shall provide clean bed linen, towels, and washcloths at least once each week and prior to the letting of any room to a new occupant. The owner or operator shall be responsible for the clean and sanitary maintenance of all supplied linen and bedding.

## 10.2 Motels.

- (a) Water Closet, Basin, Shower or Bathtub Facilities Required. Each motel unit shall contain a room



that affords privacy to a person within the room and is equipped with a water closet, lavatory basin and bathtub or shower or both in good working condition. Every lavatory basin, bathtub or shower shall be properly connected to an approved culinary water system so an adequate amount of hot and cold water may be drawn and connected to an approved sewer system.

- (b) Adequate Kitchen Facilities Required. Motel kitchen facilities shall comply with all requirements for hotel room kitchen facilities in Section 10.1(b).
- (c) Clean Bedding and Linens Required. Owners and operators of motels shall comply with all hotel requirements for clean bedding and linens in Section 10.1(c).

### 10.3 Rooming Houses, Rooming Units, Dormitories, Dormitory Rooms.

- (a) Water Closet, Basin, Shower or Bathtub Facilities Required. If private water closets, lavatory basins, or bathtubs or showers or any combination are not available, there shall be provided a room with these facilities and reasonable accessible on each floor. If both sexes are occupants or guests, separate facilities for each sex shall be provided on each floor and clearly marked for either men or women. There shall be at least one water closet for each ten or fewer male persons and at least one water closet for each eight or fewer female persons. Urinals shall be provided at the ratio of one for each twenty-five or fewer men up to one hundred fifty men and with one additional urinal for each fifty or fewer men thereafter. Lavatory basins shall be provided at the ration of one for each twelve or fewer persons of each sex if separate facilities are provided. Showers or bathtubs or both shall be provided at the ration of one shower or bathtub for each eight or fewer men or women. For women's dormitories, additional bathtubs shall be installed at a ratio of one for each thirty women. If there are over one hundred fifty persons, one shower or bathtub shall be added for each twenty or few persons thereafter. The above facility ratios shall include members of the operator's family if they

share the facilities. All the above mentioned facilities shall be in good working condition and properly connected to approved culinary water and sewer systems. Every basin, bathtub, or shower or both shall be properly connected so an adequate amount of hot and cold water may be drawn.

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(b) Adequate Kitchen Facilities Required.

- (1) Cooking in rooming units is prohibited.
- (2) Cooking in dormitory rooms is prohibited unless there is adequate space for cooking facilities.
- (3) Kitchen facilities for dormitories and for joint use by occupants of rooming houses shall comply with all requirements for hotel room kitchen facilities in Section 10.1(b).
- (4) All food service and dining facilities provided in a rooming house or dormitory for the occupants shall comply with the Department's Food Service Establishment regulations.

(c) Clean Bedding and Linens Required. The owner or operator of every rooming house shall provide cleaned bed linen, towels, and washcloths prior to the letting of any room to any new occupant; and, unless exempted by written contract between the owner and tenant, the owner shall change and provide clean bed linens, towels, and washcloths at least once a week for each occupant. The operator shall be responsible for the clean and sanitary maintenance of all supplied bedding, towels, and washcloths.

(d) Space and Occupancy Requirements Specified.

- (1) Every rooming unit shall comply with the applicable requirements of these regulations pertaining to dwellings; except a rooming unit occupied by one person shall contain at least one hundred ten square feet (10.2 square meters) of floor space; and every rooming

unit occupied by more than one person shall contain at least ninety square feet (8.4 square meters) for each additional occupant.

- (2) Every rooming unit shall contain at least four square feet (.37 square meter) of horizontal closet wardrobe space for each occupant, with an unobstructed closet height of at least five feet (1.52 meters); or if the closet space is lacking in whole or in part, space of the amount of the deficiency shall be subtracted from the area of the habitable room space in determining occupancy and adequate closet-type facilities shall be provided.

#### 11.0 ALTERNATIVE STANDARDS FOR EMERGENCY AND TEMPORARY HOUSING.

11.1 Emergency Housing. The Director may permit an exception to these regulations if an emergency exists and the public health, safety, or welfare is or may be affected. Emergency housing shall be established as approved by the Director.

11.2 Temporary Housing. Tents, trailers, campers, or other temporary housing shall not be used as a dwelling or dwelling unit unless exempted by the Department.

#### 12.0 CLOSING AND VACATING.

12.1 Substandard Dwellings Closed. Any dwelling or dwelling unit that is found to have one or more of the following defects may be closed to occupancy as unfit for human habitation and shall be so designated or placarded or both by the Director. Unfitness shall include any dwelling or dwelling unit:

- (a) That is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates or may create a hazard to the health or safety of the occupants or of the public. Lack of electricity, hot or cold water or both, adequate heating facilities during cold weather, or sewer or garbage service may be considered prima facie evidence of a health or safety hazard sufficient to require closure.
- (b) That lacks illumination, ventilation, or sanitation facilities adequate to protect the health or safety of the occupants or of the

public; or

- (c) That because of its location is unsanitary or is dangerous to the health or safety of the occupants or of the public.

12.2 Vacating Required Upon Closing to Occupancy. Any dwelling or dwelling unit closed to occupancy as unfit for human habitation and so designated by the Director shall be vacated within a reasonable time as ordered by the Director. It shall be the duty of the Director to give notice in writing to the owner, lessee, or occupant of the action taken.

12.3 Tampering with Placard Prohibited. No person, other than the Director, shall deface or remove the placard from any dwelling or dwelling unit that has been closed to occupancy as unfit for human habitation.

12.4 Approval Required Prior to Occupancy of Closed Dwelling. It shall be unlawful for any person to occupy any dwelling or dwelling unit that has been closed as unfit for human habitation until written approval of the Director is given and any placards are removed by the Director. The Director shall remove the placard(s) if all substantial violations have been eliminated.

12.5 Securing of Unoccupied Structures Required. If a vacant building or any part of a building has become a nuisance or unfit for human habitation, the Director shall have the power to require that the premises be properly secured to prevent entry by unauthorized persons. The owner, lessee, or occupant shall be given notice to secure, close, or make safe the building within a reasonable time. If the owner, lessee, or occupant fails to secure the building or its part as required, the Director may proceed to secure it and charge the costs against the owner, lessee, or occupant. If necessary, the Director may initiate legal proceedings for the collection of costs. If a building or any part thereof is vacant and not secure, or is accessible to the public, this may be considered prima facie evidence it is a nuisance, and securing may be required.

12.6 Occupying Closed Dwelling Unlawful. It shall be unlawful for any person to occupy, lodge, or sleep in or cause or permit any person to occupy, lodge or sleep in any building, dwelling, or other place that is currently closed to occupancy by order of the Department.

### 13.0 NOTICES AND OTHER ACTIONS.

13.1 Department to notify owners or others of violations.  
If the Director has inspected any dwelling or dwelling unit and has found and determined that it is in violation of these regulations or has reasonable grounds to believe that there has been a violation of any part of these regulations, he shall give notice of the violations(s) to the owner(s) or other responsible person(s) thereof.

13.2 Department to issue written notice of violation(s).  
Prior to initiating a court complaint for the violation of these rules and regulations, the Director shall issue a written notice pursuant to Section 13.1 and shall:

- (a) describe the property;
- (b) give a statement of the cause for its issuance;
- (c) set forth an outline of the remedial action that complies with the provisions of these regulations;  
and
- (d) set a reasonable time for the performance of any required remedial act.

13.3 Department to serve notice. The Director shall serve notice upon the owner(s) of the property or other responsible person(s) pursuant to Sections 13.1 and 13.2 of these rules and regulations. Service shall be deemed complete if the notice is served in one of the following ways:

- (a) served in person;
- (b) sent by certified mail to the last known address of the owner(s) or other responsible person(s); or
- (c) published in a newspaper of general circulation.

13.4 Certificate of Noncompliance and Compliance Recorded.  
If compliance with the order does not occur within the time specified and no appeal has been properly and timely filed, or if more violations have occurred, the Director may file in the office of the County Recorder a certificate describing the property and certifying that the property is in violation of Department regulations and the owner has been notified. If all of said violations have been corrected, the Director shall file a new certificate with the County Recorder certifying that the property is in compliance with Department regulations.

13.5 Emergency Action Without Notice and Hearing. If the Director finds that an emergency exists that requires immediate

action to protect the public health, he may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately, but, upon proper written petition to the Department, shall be granted a hearing within forth-eight hours. After the hearing and depending upon the findings as to whether the person has complied with the provisions of these regulations, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration or abating an emergency shall be charged to the owner, occupant, or other person responsible. Legal proceedings may be initiated to recover the cost of correcting or abating the emergency.

#### 14.0 ENFORCEMENT AND COMPLIANCE.

14.1 Director to Ensure Compliance. It shall be the duty of the Director, upon the presentation of proper credentials, to inspect any dwelling, dwelling unit, or its premises as necessary to ensure compliance with these regulations.

14.2 Inspection Made With Consent. Departmental inspections may be made with the consent of the owner(s) or other responsible person(s). If consent is not granted, a search may be made pursuant to an administrative search warrant issued by a court of competent jurisdiction.

14.3 Owner(s) or Other Responsible Person(s) May Request a Factual Report of Inspections. Upon request, the owner(s) or other responsible person(s) of any dwelling, dwelling unit, or its premises shall receive a report setting forth all facts that relate to his compliance status.

14.4 Occupant to Permit Entry for Corrections. Every occupant of a dwelling or dwelling unit shall give the owner or his employee access to any part of the dwelling, dwelling unit, or its premises at all reasonable times to make all corrections that will effect compliance with the provisions of these regulations, or with any other law or lawful order issued pursuant to the provisions of these regulations.

#### 15.0 RIGHT TO APPEAL.

Within 10 calendar days after the Department has given a notice of violation(s), any person(s) aggrieved by the notice may request in writing a hearing before the Department. The hearing shall take place within 10 calendar day after the request. A written notice of the Director's final determination shall be given within 10 calendar days after adjournment of the hearing. The Director may sustain, modify, or reverse the action or order.

#### 16.0 PENALTY.

16.1 Any person who is found guilty of violating any of the provisions of these rules and regulations, either by failing to do those acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26-24-22, Utah Code Annotated, 1953, as amended. If a person is found guilty of a subsequent similar violation within two years, he is guilty of a class A misdemeanor, pursuant to Section 26-24-22, Utah Code Annotated, 1953 as amended.

16.2 Each day such violation is committed or permitted to continue shall constitute a separate violation.

16.3 The city attorney or , if appropriate, the County Attorney may initiate legal action, civil or criminal, requested by the Department to abate any condition that exists in violation of these rules and regulations.

16.4 In addition to other penalties imposed by a court of competent jurisdiction, any person(s) found guilty of violating any of these rules and regulations shall be liable for all expenses incurred by the Department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

#### 17.0 FEE CHARGES.

The Department may charge such permit fee as is necessary to implement the provisions of these regulations, and requirements and standards adopted pursuant to them.

#### 18.0 SEVERABILITY.

If any provision, clause, sentence or paragraph of these rules and regulations or the application thereof to any person or circumstances shall be held to be invalid, such invalidity shall not affect the other provisions or applications of these rules and regulations. The valid part of any clause, sentence, or paragraph of these regulations shall be given independence from the invalid provision or application and to this end the

provisions of these regulations are hereby declared to be severable.

19.0 EFFECTIVE DATE.

These rules and regulations shall be come effective fifteen days after their enactment by the Salt Lake City County Board of Health.



Tab 13

## **STATUTES AND RULES**

### **UTAH FIT PREMISES ACT:**

(1) Each owner and his agent renting or leasing a residential rental unit shall maintain that unit in a condition fit for human habitation and in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the residential rental unit is located. Each residential rental unit shall have electrical systems, heating, plumbing, and hot and cold water.

Utah Code Ann. § 57-22-3(1).

(2) In the event the renter believes the residential rental unit does not comply with the standards for health and safety required under this chapter, the renter shall give written notice of the noncompliance to the owner. Within a reasonable time after receipt of this notice, the owner shall commence action to correct the condition of the unit. The notice required by this subsection shall be served pursuant Section 78-36-6.

Utah Code Ann. § 57-22-4(2).

### **GENERAL PROVISIONS REGARDING DISCOVERY:**

(a)(3)(B) Unless otherwise stipulated by the parties or ordered by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

Utah R.Civ.P. 26(a)(3)(B).

#### **FAILURE TO MAKE OR COOPERATE IN DISCOVERY; SANCTIONS:**

(a)(4)(A) If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

Utah R.Civ.P. 37(a)(4)(A).

#### **MOTION FOR INVOLUNTARY DISMISSAL/DIRECTED VERDICT:**

(b) *Involuntary dismissal; effect thereof.* For failure of the plaintiff to prosecute or comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

Utah R.Civ.P. 41(b).

## **SALT LAKE COUNTY HEALTH DEPARTMENT REGULATIONS VIOLATED BY LANDLORD:**

### **5.0 RESPONSIBILITIES OF OWNERS AND OCCUPANTS.**

The division of responsibility between owners and occupants for maintenance, sanitation, and repair of dwelling or dwelling units shall be as follows. Any person violating any duty imposed by these regulations shall be liable for that violation(s) even though an obligation also may be imposed on others and even though a contract has imposed on others the duty of complying with these regulations.

#### **5.1 Occupying or letting of Unfit Dwelling or Dwelling Unit Unlawful.**

No owner, occupant, lessee, or any other person shall occupy, let to another person, or permit occupancy of any dwelling or dwelling unit unless it and the premises are safe, clean, sanitary, in good repair, fit for human occupancy, and in compliance with these regulations and all other appropriate legal requirements.

#### **5.5 Storage and Disposal of Refuse Required.**

Storage and disposal of refuse shall be done in a clean, sanitary, and safe way and in accordance with the solid waste regulations of the Department.

#### **5.8 Extermination of Insects and Rodents Required.**

- (a) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of vermin therein or on the premises.
- (b) Every occupant of a dwelling containing more than one dwelling [unit] shall be responsible for such extermination whenever his dwelling unit is the only one infested.
- (c) Notwithstanding the foregoing provisions of this subsection, if infestation is caused by failure of the owner to maintain a dwelling or dwelling unit in a pestproof condition, extermination shall be [the] responsibility of the owner.
- (d) If infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

## **SALT LAKE COUNTY HEALTH DEPARTMENT REGULATIONS VIOLATED BY LANDLORD:**

### **5.9 Prevention of Rodent Harborage Required.**

The owner or occupant of a dwelling or dwelling unit shall not accumulate rubbish, boxes, lumber, scrap metal, or any other materials in a way that may provide rodent harborage in or about any dwelling or dwelling unit or its premises, including, but not limited to shared or public areas. Stored materials shall be neatly stacked in piles elevated at least eighteen inches above ground level. No stacking or piling of materials shall take place against the exterior walls of the structure.

### **5.11 Sanitary Usage of Fixtures and Facilities Required.**

Every occupant of a dwelling or dwelling unit shall keep all fixtures and facilities clean and sanitary and be responsible for reasonable care in their proper use and operation.

### **5.12 Maintenance of Appliances and Furnishings Required.**

If appliances and furnishings are supplied by the owner, they shall be installed and maintained in good repair by the owner.

### **5.15 Control of Drainage of Standing Water is Required.**

Every premises shall be graded and drained of standing water and maintained clean, sanitary, and safe by the owner. The owner shall not allow water to stand beneath or in building. This does not preclude the presence of fish or ornamental ponds or lakes.

### **5.18 Duties of Owner(s) Upon Vacating.**

If any dwelling, dwelling unit, storeroom, or other structure is vacated and the occupant is unavailable, the owner(s) shall remove all junk, including junk vehicles, garbage, rubbish, and refuse from the structure(s), premises and grounds appurtenant thereto, placing the same in a sanitary condition within ninety-six hours after the premises are vacated.

## **SALT LAKE COUNTY HEALTH DEPARTMENT REGULATIONS VIOLATED BY LANDLORD:**

### **6.5 Adequate Water Heating Facilities Required.**

Every dwelling unit shall have water heating facilities that are properly installed, maintained, and in a safe and good working condition and are capable of providing [an] adequate amount of hot water that may be drawn at every required kitchen sink, lavatory basin, bathtub, or shower, except as provided in Section 10.1 and 10.3.

### **6.8 Requirements for Habitable Basements Specified.**

No basement space shall be used as a habitable room, dwelling unit, or dwelling unless:

- (a) The floor and walls are impervious to leakage of underground and surface runoff water and are insulated against dampness.
- (b) The total window [area] in each room is equal to at least the minimum window area sizes required in Section 9.1 of these regulations.
- (c) The total openable window area in each room is equal to at least the minimum as required in Section 9.1 of these regulation, except if there is supplied some other device affording adequate ventilation and approved by the Director.
- (d) Total floor space requirements and required ceiling height are not less than the minimums required under Sections 6.2 and 6.3 of regulations.

### **7.1 Building Structural Requirements Specified.**

Every foundation, inside stairs, chimney, floor, exterior and interior wall, ceiling, roof, and all accessory buildings shall be weather and water-tight, insect and rodent proof, and in good repair. Outside stairs shall be kept in good repair.

### **7.2 Window and Door Requirements Specified.**

Every window, skylight, exterior door, basement hatchway, and other openings connected with habitable rooms shall be weather-tight, pest proof, and kept in good repair. Every interior door shall be kept in good repair. Every exterior door of dwelling units and single unit dwellings shall be provided with one or more locking devices so the door can be locked from

both the inside and outside in conformance with local fire and building codes. Other potential trespass entrances shall be secured.

## **SALT LAKE COUNTY HEALTH DEPARTMENT REGULATIONS VIOLATED BY LANDLORD:**

### **7.5 Adequate Fence Requirements.**

All fences, including masonry walls, shall be constructed of material approved by the Department, maintained in good condition, and not create a harborage for rodents. Wood materials shall be protected against decay with paint that is not lead-based or by other preservative material.

### **8.2 Fire Equipment Required.**

Every dwelling and dwelling unit shall contain installed and maintained fire equipment that meets the applicable fire laws.

### **8.4 Safety of Equipment Required.**

Every supplied facility, piece of equipment, or utility shall be so constructed or installed that it will function safely and be maintained in a satisfactory working condition.

## **9.0 MINIMUM REQUIREMENTS FOR LIGHT, VENTILATION, HEATING, COOLING, PLUMBING.**

9.3 If facilities for climate control, including cooling or humidity or both, are provided in structures containing dwelling units or rooming units, the facilities shall be maintained and operated in a continuous manner when necessary to maintain a comfortable environment, and in accordance with the designed capacity of the installed equipment. During instances when the equipment is inoperative because of power or mechanical failure, alternative provisions for fresh air ventilation of each dwelling or rooming unit shall be provided.

## **SALT LAKE COUNTY HEALTH DEPARTMENT REGULATIONS VIOLATED BY LANDLORD:**

### **9.7 Adequate Electrical Service, Outlets, and Fixtures Required.**

Where usable electrical service is readily available from power lines that are not [more] than three hundred feet (91.5 meters) away from a dwelling or dwelling unit, every said dwelling or dwelling unit and all public and common areas shall be supplied with electrical service, outlets, wirings, and fixtures that are properly installed and maintained in good and safe working condition in a way prescribed by laws of appropriate legal jurisdictions. All appliances shall be installed and maintained in a safe condition and in accordance with the National Electrical Code and the Uniform Building Code. The minimum capacity of services and the minimum number of outlets and fixtures shall be as follows:

- (a) Every habitable room and bathroom of a dwelling or dwelling unit shall contain at least 2 separate wall type electrical convenience outlets with fireplates or one convenience outlet and one ceiling type electric light fixture.
- (b) Every water closet compartment, laundry room, furnace room, and public hallway shall contain at least one supplied electric light fixture.

### **9.9 Adequate Plumbing Fixtures, Water Pipes, and Waste Pipes.**

Every plumbing fixture, waste pipe, water pipe, and appurtenance shall be properly constructed and installed in conformance with the appropriate statutes, ordinances, and regulations of appropriate legal jurisdiction. All plumbing fixtures, waste pipes, and appurtenances shall be maintained in a sanitary working condition, and free from leaks, defects, and obstructions. No plumbing fixture, water pipe, waste pipe, or other device shall be connected or arranged in a such a way that it would be possible for nonpotable, used, [unclean], polluted, or contaminated water or other substances to enter the potable water system under any condition. An approved, properly connected, and functioning pressure temperature relief valve shall be present on all water heaters, boilers, and other hot water apparatuses.



Tab 14

1 stand. You're still under oath.

2 DIRECT EXAMINATION

3 BY MR. SHEFF:

4 Q. Shannon, just one question. Is there a basement in the  
5 bathroom of this house?

6 A. Do you mean is there a bathroom in the basement?

7 Q. Yeah. I'm sorry. Is there a bathroom in the basement  
8 of this house which she says she went down and saw?

9 A. No, sir. No, sir. And there's no sliding glass door.

10 MR. SHEFF: Yeah. Thank you. No questions for this  
11 witness.

12 THE COURT: Wait, wait, wait.

13 THE WITNESS: Oh, I'm sorry. I apologize.

14 THE COURT: Any questions?

15 MR. ROUNDY: No, your Honor.

16 THE WITNESS: I'm new here.

17 THE COURT: No sliding door, no basement -- or no  
18 bathroom. Okay. Rest?

19 MR. SHEFF: Well, that would be the plaintiff.

20 MR. ROUNDY: Yes, we rest.

21 THE COURT: Well, no, do you rest for surrebuttal?

22 MR. SHEFF: Oh. Yes, we do rest, your Honor.

23 THE COURT: Okay. Both sides submit it. Okay. Let's  
24 have closing. Let's be very brief and very to the point on  
25 closing. You've both given me your pre-trial briefs; I

1 understand those. You've given me your proposed findings; I've  
2 gone over those. I've laboriously listened to almost two days of  
3 testimony, and let's get right to the issues.

4 MR. ROUNDY: Well, your Honor, there is one motion I  
5 think I need to make before we proceed to that point.

6 THE COURT: All right.

7 MR. ROUNDY: We would make a motion now to strike all of  
8 the irrelevant or otherwise inadmissible evidence that relates to  
9 the condition of the property prior to acceptance by these  
10 parties based on the terms of the rental agreement.

11 THE COURT: Very well, thank you.

12 MR. SHEFF: May I respond to that, your Honor?

13 THE COURT: Certainly, Mr. Sheff.

14 MR. SHEFF: If I understand the plaintiff's -- the basis  
15 of plaintiff's motion, it's the parole evidence rule. I'll  
16 address that issue. As your Honor probably knows, the general  
17 rule is that extraneous evidence may not be used to contradict or  
18 vary the terms of a written instrument. That's the general rule  
19 here.

20 However, the parole evidence rule quote, "It does not  
21 preclude proof of agreements as to collateral matters relating to  
22 the contract or its performance, so long as they are not  
23 inconsistent with nor in repudiation of the terms of the written  
24 agreement. Nor does it prevent proof that a party did not  
25 perform an obligation which it was understood and agreed by the

1 parties with a condition precedent to the contract becoming  
2 effective." That is from F&A Financial Corp, 617 P.2d 327, a  
3 Utah Supreme Court case.

4 THE COURT: How could these cir -- under these  
5 circumstances, how could that oral testimony be nothing but a  
6 repudiation of the agreement? The agreement is indicating that  
7 it was either none or blank as to any problems on both the  
8 original lease and the -- and the renewal lease. How could this  
9 testimony not be in repudiation of that portion of the  
10 (inaudible)?

11 MR. SHEFF: Because that testimony, your Honor, was  
12 discussing an actual part or term of this contract. The term of  
13 the contract is implied by law. The Utah Fit Premises Act  
14 requires and mandates that in every residential lease in the  
15 State of Utah the landlord must do two things -- tender habitable  
16 premises and premises that are in accordance with the local  
17 health rules.

18 So when my clients or anybody else is discussing those  
19 terms of the failure of the plaintiff to perform, they're not  
20 discussing a collateral agreement. They're not discussing  
21 something outside the four corners of the contract. They are  
22 actually talking about the plaintiff's failure to perform in  
23 material terms of the contract, which is implied by operation of  
24 law.

25 The plaintiff wants you to believe that my clients can

1 waive that with a general integration clause which was formed  
2 only after my clients signed the agreement. But as PH Investment  
3 vs. Oliver makes clear, that waiver has to be express, your  
4 Honor. The landlord has the obligation to list specifically all  
5 of those things that are not in compliance with the code, are not  
6 habitable to make it part of the agreement. That, there's no  
7 dispute, was never done in this case.

8 Finally, with respect to the parole evidence rule, your  
9 Honor, FMA -- that case again also states that the rules, quote,  
10 "Should not be applied with any such unreasoning rigidity as to  
11 defeat what may be shown to be the actual purpose and intent of  
12 the parties, but should be applied in the light of reason to  
13 serve the ends of justice."

14 Whether there was such an agreement, not a contradiction  
15 of the written document, is for you to decide, your Honor. So  
16 based on that, I do not believe that the plaintiff's motion to  
17 exclude that testimony is well founded because we're not talking  
18 about parole evidence. We're talking about direct testimony  
19 about a material term of the contract that was implied by law and  
20 specifically talking about the failure of the plaintiff to  
21 perform an obligation that she was required to perform under the  
22 Utah Fit Premises Act and the Salt Lake City Health Code.

23 THE COURT: Very well. Any response, Mr. Roundy?

24 MR. ROUNDY: No, your Honor. I think the Court  
25 understands the meaning of parole evidence.

1           THE COURT: The Court here will not strike the evidence,  
2 and it will not strike it for the following reasons.  
3 Habitability or inhabitability is always an existing issue in  
4 this matter. In spite of the statements on the contract of none  
5 or leaving it blank and then filled in later, that says what it  
6 says and the Court will take that into consideration. But the  
7 issue of habitability always remains, and that's why I'll allow  
8 it, to my detriment and much to my chagrin, all of this testimony  
9 about the -- about the condition of the home.

10           So with habitability being an issue, that will be part  
11 of the argument, and I'll make rulings on that. But I'm not  
12 striking it. It's there. It will be considered by me and any  
13 other appellate Court on that issue as to whether the relevance  
14 of that will overcome or grant any relief as indicated by the  
15 defense or requested by the defense. That's something that will  
16 remain to be seen. But as to whether or not this is being  
17 stricken or not, no, it's not being stricken.

18           MR. ROUNDY: Thank you, your Honor. With regard to  
19 the closing, I think that I need to emphasize some of the  
20 testimony --

21           THE COURT: Certainly.

22           MR. ROUNDY: -- that was provided in the course of the  
23 case about (inaudible) and habitability.

24           THE COURT: Very well.

25           MR. ROUNDY: I will lead the Court through my findings

1 of fact and conclusions of law very quickly. The first two  
2 paragraphs establish, based on the request for admissions, the  
3 terms of these agreements. Then through the remainder of the  
4 statement of facts we mention specific paragraphs of the rental  
5 agreement that's applicable for rent that is due. I don't  
6 believe that was contested; or late fees that were due, which I  
7 believe was uncontested; for a utility bill that was unpaid,  
8 which I believe was uncontested.

9 Then that left us with issues of repairs and cleaning to  
10 the property. I told the Court that I would give the Court some  
11 totals at the end of the trial in closing statement, and here's  
12 what we came up with in terms of the evidence.

13 For evidence presented we had 63-and-a-half hours spent  
14 cleaning by Mrs. Myrah at \$20 per hour. She's seeking \$1,270.  
15 She provided receipts in the form of an exhibit, which she  
16 testified about those that were applicable and not applicable.  
17 Those that were applicable totaled \$332.14.

18 She testified concerning work that was done by Gus  
19 Dixon, and the total of that bill was \$1,877.18.

20 THE COURT: Let me correct you. She didn't testify  
21 about the work as such that Gus Dixon did. She testified that  
22 she paid Gus Dixon.

23 MR. ROUNDY: Correct.

24 THE COURT: So the payment was 18 what?

25 MR. ROUNDY: It was \$1,877.18.

1 THE COURT: Thank you.

2 MR. ROUNDY: That exhibit was admitted for the purpose  
3 of showing the amount that was paid.

4 THE COURT: That's right. Thank you.

5 MR. ROUNDY: She testified verbally as to what repairs  
6 were done.

7 THE COURT: Right.

8 MR. ROUNDY: Then she also testified that she paid  
9 \$2,200 to replace the linoleum, and that it was approximately an  
10 area -- the area affected by the mark in the linoleum was the  
11 kitchen area, approximately 25 percent of the linoleum that she  
12 had to replace. We are seeking \$500 as a fair price for the  
13 amount of linoleum that was damaged as a result of that. That  
14 totals \$3,979.32.

15 Now the defendant's had a deposit of \$1100. So when we  
16 subtract \$1100 as credit to them, that leaves \$2,879.32 total for  
17 the repairs and cleaning.

18 Then we have rent, \$1145. Late fees, \$109.50. The  
19 utility bill, \$122.37. The total of what we're asking for  
20 repairs and cleaning plus those additional items is \$4,256.19.

21 My client is also asking for prejudgment interest, and  
22 we would be happy to stipulate to simply multiplying this rather  
23 than at per annum, compounding. So we would simply multiply 10  
24 percent, the prejudgment interest rate of \$425.62 by 4.75 years.  
25 The total of that prejudgment interest calculation that I've come



1 up with is \$2,021.68 prejudgment interest. Then we would seek  
2 leave of the Court to just establish our costs and attorney's  
3 fees.

4 THE COURT: Right. And if I do -- if I do rule as to  
5 entitlement, then the attorney's fees will be discussed via  
6 affidavit.

7 MR. ROUNDY: Very well.

8 THE COURT: Thank you.

9 MR. ROUNDY: Thank you. Now in terms of the evidence  
10 that was presented, we have several items of documentary or  
11 (inaudible) evidence that the premises were in good condition at  
12 the beginning of the first lease.

13 That evidence includes Ms. Myrah's testimony, the  
14 testimony of Ms. Sohm that was just provided, and the documents  
15 themselves -- the rental agreement, the renewal agreement. We  
16 have defendants to thank for introducing a number of additional  
17 expenses that were incurred in 1998 in terms of repairing the  
18 property. Ms. Myrah was also cross examined extensively about  
19 that preparation by the defendants, and so you have all that  
20 evidence proving that she was here and work was being done by her  
21 to prepare the premises.

22 We also have an inspection report from the Salt Lake  
23 County Health Department. We had a witness come from the health  
24 department. He indicated that he would not have closed the file  
25 on this case if all of the items on his list had not been

1 repaired. We have a great deal of correspondence, which as was  
2 illustrated through the testimony today, that to the extent there  
3 were other problems, those were not documented by the Campbells.  
4 They mention a few things in the emails. They didn't mention  
5 things like the swamp cooler during the first year of the lease.

6 That's -- that all comes down -- these allegations  
7 mainly come down to verbal testimony other than this single  
8 document of things that were remediated, according to the health  
9 department, in September of 1998. Now that's --

10 THE COURT: You're relying upon -- you're relying upon  
11 Plaintiff's No. 8 as to the 9/28 entry, 9/28 of '98 entry.  
12 That's what you're relying upon?

13 MR. ROUNDY: Yes, I'm relying on that, plus the  
14 testimony of Mr. Dalley.

15 THE COURT: Thank you.

16 MR. ROUNDY: Thank you, your Honor. Now that is just  
17 preparatory to entering into a renewal agreement. The renewal  
18 agreement is the agreement that we are here to discuss today.  
19 There is no counterclaim being made. We are not asking for any  
20 money pursuant to the terms of the rental agreement --

21 THE COURT: And this is important to me, as to the  
22 history of the case, counterclaims were filed.

23 MR. ROUNDY: Yes.

24 THE COURT: However, what happened to the counterclaims?

25 MR. ROUNDY: Those counterclaims were dismissed on a

1 motion for summary judgment.

2 THE COURT: Very well. Okay.

3 MR. ROUNDY: Now the renewal agreement is dated May 6,  
4 1999 and was signed by Klaus Campbell with the knowledge of his  
5 wife on June 1<sup>st</sup>, 1999; and the parties continued to live there  
6 for an additional 11 months under the terms of the renewal  
7 agreement.

8 At the time they entered into the renewal agreement,  
9 they had lived there long enough that they can no longer make any  
10 excuses that I think this was not clean enough when I moved in.  
11 They can't make any more excuses that there's something that  
12 wasn't repaired that should have been included in the agreement.  
13 All of this he said/she said type of, you know, testimony about  
14 how Geralynn Myrah was offering to be so generous to them until  
15 they entered -- until she received a signed agreement is parole  
16 evidence that doesn't go to the question of habitability. It's  
17 parole evidence that goes to direct attempt to modify the terms  
18 of the written agreement in terms of what the parties agreed they  
19 would do with regard to the condition of the premises.

20 It's also, I think, important to note that both the  
21 original rental agreement and the renewal agreement contains  
22 specific provisions that require the defendants to maintain the  
23 property in good and clean condition. Because there were so many  
24 minor items as the email from Klaus Campbell specifically  
25 mentioned, when they prepared the renewal agreement they added

1 paragraph 2, which offered a discount program that would allow  
2 Klaus Campbell to repair things that cost \$50 or less and deduct  
3 that from the rent.

4 As he testified with regard to the list that he prepared  
5 for his Counsel, he listed that he paid full rent every month of  
6 the lease. He never once, except for that very last time  
7 relating to April, made any effort to even ask for a discount.

8 The testimony of both parties as to the condition of the  
9 property when the defendants left is the same. They both  
10 testified that the premises were in terrible condition when they  
11 left, and therefore I think it's reasonable to assume that  
12 Mrs. Myrah did in fact spend a considerable amount of time  
13 cleaning and repairing the property. All of these things which  
14 the contract terms and the documentary evidence provide were  
15 problems at the -- were not problems at the original commencement  
16 of the agreement, and apparently were in fact problems at the  
17 end.

18 So I think that aside from the fact that Mrs. Myrah  
19 spent a considerable amount of money making repairs and a  
20 considerable amount of time making repairs, I think it's  
21 reasonable to assume from defendants' testimony that in fact the  
22 premises were not in good condition and repair at the time that  
23 they moved out. Therefore, it would be reasonable and necessary  
24 for the landlord to repair the property when -- and clean the  
25 property when they moved out. Thank you, your Honor.

1 THE COURT: Thank you, Mr. Roundy. Mr. Sheff?

2 MR. SHEFF: Your Honor, just to hit the two last points  
3 there, Counsel just said that it's reasonable to assume that the  
4 plaintiff spent a considerable amount of time to clean and repair  
5 the premises. Well, that's what you're required to do to find  
6 for the plaintiff is to assume that she did this.

7 There is no other evidence out there, other than the  
8 plaintiff's own testimony, that any of this so-called work on the  
9 worst house she had ever seen, that this young family with three  
10 small kids were the worst tenants she had ever had, reasonable to  
11 assume from the defendants' testimony that the condition of the  
12 house was in such a poor state of repair? Well, we have to  
13 assume that, your Honor, because that's what the plaintiff did.

14 She assumed that Gus Dixon fixed these things. She  
15 assumed that Gus Dixon cleaned the house up before my clients  
16 arrived at the beginning of that lease. She assumed all these  
17 things took place at the house because she's never there.

18 She doesn't care enough about her tenants to be there.  
19 She doesn't realize that in her retirement being a property  
20 manager is actually quite a time consuming job. Well, while  
21 she's traveling to Europe the whole time while these people have  
22 to suffer through this, she doesn't even care.

23 Your Honor, let me start with the facts -- not  
24 assumptions based solely on what plaintiff's testimony was about  
25 how she assumed that Gus Dixon took this and fixed it, how she

1 assumed that screens got put in, and talk about what actually  
2 happened here.

3           You heard from Carter Hill, a former tenant; Bonnie  
4 Sackett, a neighbor; Shane Degnan, a neighbor. All of them  
5 testified consistently with what my clients testified to, was  
6 that that house on June 15<sup>th</sup>, 1998 -- something that the plaintiff  
7 can't testify about, something that Mary Sohm can't testify  
8 about -- was horrible. It was disgusting. This is what her  
9 house was like for years, and she never did anything to fix it.  
10 Although she made a bunch of promises, she certainly led these  
11 people to believe she was going to fix these things. Under Utah  
12 law, your Honor, fortunately the legislature of this State  
13 doesn't allow a landlord to make these assumptions.

14           THE COURT: Now -- and you have brought forth the Utah  
15 Fit Premises Act. You've brought forth responsibility of the  
16 owners and occupants when they violate Salt Lake County Health  
17 Code provisions, things of that nature; is that correct?

18           MR. SHEFF: Yes, your Honor.

19           THE COURT: Now with that done, isn't -- are we mixing  
20 apples and oranges? Isn't a violation of the health code a  
21 violation that should be prosecuted, and this is not -- certainly  
22 not a prosecution arena today. It may give me guidance as to  
23 what standards were shown, but violations of the health code  
24 result in criminal prosecutions; do they not?

25           MR. SHEFF: They could, your Honor.

1           THE COURT: Okay. How are they related to civil matters  
2 like now, other than to show me that duties of owners and renters  
3 et cetera as in the code, and it's a violation if they don't do  
4 things, what's the impact on that to me in the civil sense?

5           MR. SHEFF: It's the consideration, your Honor. You  
6 can't have a contract in this State without there being  
7 consideration.

8           The plaintiff here wants you to assume that because my  
9 client signed an agreement and they said, "Yes, we've admitted in  
10 our requests for admissions that is the agreement that we  
11 signed." Well, the fact that my client can sit around with these  
12 piece of paper and say, "Here's our agreement," doesn't create  
13 consideration, your Honor. It just doesn't create it.

14          The plaintiff has to prove that there is in this  
15 bilateral contract binding promises that both parties have to  
16 perform. My client's obligation to pay rent is contingent upon  
17 the plaintiff's obligation under the law to provide something to  
18 my client, and that something is property that is in a condition  
19 fit for human habitation, and in accordance with the local  
20 ordinances.

21          She didn't tender the consideration for this contract,  
22 your Honor. It is a failure of consideration. Because it's a  
23 failure of consideration, you cannot compel the performance of my  
24 clients to pay rent.

25          Aguagen, a Utah Supreme Court case --

1           THE COURT: And then you're not asking for the rent to  
2 be disgorged. All you're doing is saying that based upon  
3 everything that happened in the previous 23 months, they don't  
4 need to pay that last month's rent. That's what you're asking me  
5 in essence, aren't you, because you can't ask for the money back.  
6 They've already paid it. You're arguing that they shouldn't have  
7 paid it, but they already have and you can't get it back. So  
8 isn't this whole thing about that last month's rent?

9           MR. SHEFF: Yes, your Honor. My clients should not have  
10 to pay anything to this woman. They've already paid her almost  
11 \$30,000 for a five bedroom house and they only got three rooms.  
12 They shouldn't have to pay one more cent to this woman. That's  
13 what it's about.

14           Quite frankly, I think it's about a lot more. It's  
15 about attorney's fees clauses in contracts. It's about being  
16 able to get up and testify that I've spent 63-and-a-half hours  
17 chopping weeds int eh backyard and scrubbing crayon off of every  
18 single wall that wasn't there, and then switching her mind and  
19 saying, "Oh, I must have had Wanda Dixon clean all that crayon  
20 off the wall." "Oh, yeah, that fan that I bought that I'm trying  
21 to charge the plaintiff \$100 for. Oh, you're right. I took that  
22 back to the Home Depot. I didn't have any fan replaced because  
23 it was never broken. But I paid the 100 bucks to Gus Dixon  
24 anyway, even though he's not there to tell you that, because he  
25 had to do a lot of complex electrical work."



1           It's all nonsense, your Honor. It's all nonsense. In  
2 order for this case to prevail for the plaintiff, you have to  
3 believe her. We all know what her word is worth. My clients  
4 know very well what Geralynn Myrah's word is worth. Isn't it  
5 ironic that when we're talking about an important issue  
6 concerning one of her properties in Utah, where is she? The same  
7 place that she was on June 15<sup>th</sup>, 1998. Vacationing over in  
8 Europe. That's where she is, your Honor. She's an absentee  
9 slumlord from San Francisco who could care less if she puts this  
10 young family with a 3-year-old, a 5-year-old and a 9-year-old  
11 through this.

12           Any decent person would be shocked at what this woman  
13 did to this poor family. So I'm asking you, your Honor, to don't  
14 award a single cent to the plaintiff because she doesn't deserve  
15 it. She had to -- she had to tender premises that were in  
16 compliance with the code. She doesn't have a choice in the  
17 matter, your Honor.

18           The reason for that is because in this community the  
19 Utah legislature requires that decent housing be provided to  
20 tenants. We don't do this to our people in this community, your  
21 Honor. Maybe that's how they do that out in San Francisco.  
22 Maybe that's how Geralynn Myrah treats her tenants in her  
23 properties in Nevada. But the Utah legislature, the people of  
24 this community say that isn't what we're going to do here.

25           If you're a landlord, you have to -- you have to tender

1 premises that are safe. There is no way to get around this rule,  
2 your Honor. They have to be safe. They have to be clean. It  
3 has to be sanitary. It has to be in good repair and fit for  
4 human occupancy. That's the habitability issue that used to be  
5 Wade vs. Joe and PH Investments vs. Oliver; two Supreme Court  
6 cases that predated the Utah Fit Premises Act.

7 Well, the legislature acting obviously with the intent  
8 to improve housing in our community because that is a good thing,  
9 has said here that you shall maintain it in a habitable  
10 condition, and -- this is the important part, your Honor -- in  
11 accordance with the local ordinances and rules. The Salt Lake  
12 County Health Code where Mr. Dalley got up and said to you the  
13 purpose of that is -- and you can see that, your Honor. It is --  
14 I believe it's Exhibit 44. But the purpose of that is clear. To  
15 protect, preserve and promote the physical and mental health and  
16 social well being of the public. To prevent and control the  
17 incidence of communicable disease. To reduce environmental  
18 hazards to health.

19 THE COURT: And the violations of those are all criminal  
20 prosecutions, aren't they?

21 MR. SHEFF: No, they're not, your Honor. They're all  
22 failures of consideration because the plaintiff --

23 THE COURT: Mr. Sheff, now let's get -- let's be a  
24 little -- now, when someone violates the code, the county  
25 attorney or the prosecutor or the city prosecutor files an action

1 pursuant to violation of the code. Isn't that correct, Mr.  
2 Sheff?

3 MR. SHEFF: I believe they could do that, your Honor.

4 THE COURT: When you're saying it's a failure of  
5 consideration, you're giving me your argument regarding the lack  
6 of consideration of the plaintiff in this matter to abide by the  
7 terms and conditions of the implied aspects of it, as you've  
8 indicated by these. But this is not a criminal prosecution.  
9 This is not a prosecution in which I'm going to find anybody in  
10 violation. I will use these as guidelines for me, but a  
11 violation, if I even find it, has no bearing as to what I can do  
12 criminally in violation of these codes.

13 So I'm just telling you how I'm looking at it. I'm  
14 looking at these as a guide for me as to the habitability  
15 question that you have brought up. But don't just gloss over my  
16 questions to you. You know as well as I do that violations of a  
17 health code are prosecutable, and they are to be done through a  
18 prosecuting agency.

19 MR. SHEFF: That very well may be the case, your Honor.  
20 If it is the case, the effect of it in this particular case is  
21 that the entire basement of that home was never habitable, your  
22 Honor. It was never habitable. It couldn't have been habitable.

23 Number 6.8, requirements for habitable basements. These  
24 were cement walls. These were cement floors. There very well  
25 may be a criminal aspect -- I really do think it is criminal what

1 this woman is trying to do to this poor family, but it makes it  
2 not habitable. There are numerous provisions of the health code  
3 which state as such.

4           This one, for example, 9.7 "Every habitable room shall  
5 contain at least two separate wall type electrical convenient  
6 outlets with fire plates or one convenient outlet and one ceiling  
7 type electric light fixture." It was never the case down there  
8 in that cement wall basement. She didn't have any walls to put  
9 any electrical outlets in, your Honor. That's violation. That's  
10 failure to perform that integral part of the contract is a  
11 failure of consideration.

12           It is a failure of the plaintiff to live up to her end  
13 of the deal. If she breaches that obligation and it's not cured,  
14 despite my client's 11 months of giving her every opportunity in  
15 the world to come and fix all of these issues, she didn't do  
16 anything. Do you know why she didn't do anything? Because the  
17 only other time that they were to get her to come out there to do  
18 anything was to call the health department. Because she sits  
19 behind her contract and says, "Well, they signed it, and this  
20 provision here says that it was in good condition and in good  
21 repair."

22           The law doesn't allow her to argue that, your Honor.  
23 The law doesn't allow her to claim that my clients should be  
24 estopped from arguing that the condition of that house was other  
25 than what's in the contract. There is a case directly on point

1 on that issue, your Honor -- directly on point.

2 The name of the case is FMA Financial. That was a case  
3 where some farmers wanted to rent a silo, and so they contracted  
4 with a party to have a silo delivered to them in Utah. They  
5 signed an acceptance notice in the contract which says that the  
6 items were received by us, and they're in good order, good  
7 condition, and acceptable to us as delivered or installed.

8 The Court in that case -- which was upheld by the  
9 Supreme Court -- allowed the parole evidence to come in about how  
10 everybody knew that that silo was sitting in Nevada and had never  
11 been installed and never been delivered.

12 This estoppel argument that the plaintiff wants you to  
13 accept is that, "Well, I knew that the house wasn't up to code  
14 because I'm offering to fix this list of repairs. I'm asking you  
15 to send me a list of repairs. I'm actually making promises to  
16 you that I'm going to fix these list of repairs," but now she  
17 wants to say that she's relied upon that statement in the  
18 contract -- paragraph 7 -- that said you accepted the premises in  
19 good repair.

20 Well, it's false. The premises were not in good repair,  
21 as evidenced by the health department having come out, as  
22 evidenced by everything that you heard here. But more  
23 importantly, as evidenced by the plaintiff's own conduct. Her  
24 own letter saying, "Why don't you send me this stuff so Don and I  
25 can come out and fix the things, and why don't you prioritize

1 that list."

2 Well, that's what induced my client to sign the renewal  
3 agreement was that finally, they're going to think that she's  
4 actually going to live up to her statutory obligations and  
5 perform that contract. Perform that contract.

6 Well, they foolishly believed her, your Honor. When the  
7 plaintiff did not make good on her obligation to tender premises  
8 that were not only habitable, because the basement certainly  
9 wasn't, because of the stink, because of the cement walls,  
10 because there was no electrical outlets. When plaintiff failed  
11 to tender the consideration for that agreement, which of course  
12 my clients were insisting upon all of these issues being  
13 remedied, that's why they stayed.

14 You may express some excitement about why did you stay  
15 in the house and sign the renewal agreement? Well, because the  
16 plaintiff was obligated to tender premises that were habitable  
17 and in compliance with the Salt Lake Health Code. She didn't do  
18 that.

19 Under the Aquagen case, your Honor, it's quite clear  
20 what the remedy is when a party fails to do what they're supposed  
21 to do. It's quite clear.

22 "When one party to a valid contract commits an uncured  
23 material failure" -- failure to tender premises that comply with  
24 the health code -- "the non-failing party is relieved of its duty  
25 to continue to perform under the contract." Utah Supreme Court,

1 1998, citing the restatement of contracts. That general rule,  
2 your Honor, is based on the principle -- I'll actually skip that.

3 The only obligation that the plaintiff had to do, your  
4 Honor -- she didn't have a choice about it. The only obligation  
5 she had to do was tender a house that was habitable and in  
6 compliance with the health code. She didn't do her only thing.  
7 That contract is unenforceable. The plaintiff should not take  
8 anything.

9 Your Honor, I think that you see the equities of this  
10 case. I think -- I hope that you understand that this type of  
11 behavior is unacceptable in our community. The Utah Fit Premises  
12 Act was not passed to allow someone to come in from the Bay Area  
13 and do this to a nice family. It's wrong. Any decent person  
14 would think that it was wrong because performance cannot be  
15 compelled when the non-failing party to a contract fails to  
16 receive that which has been bargained for.

17 Of course they bargained for a house that was up to  
18 code, your Honor. Any person with a family with three small kids  
19 would expect that. That was the testimony and evidence you heard  
20 today. There is no doubt the plaintiff took advantage of these  
21 people, and you need to let her know that it is unacceptable in  
22 our community to do that kind of thing. She should take zero  
23 dollars.

24 THE COURT: Thank you, Mr. Sheff. Mr. Roundy?

25 MR. ROUNDY: Just briefly, your Honor. First of all,

1 the Utah Fit Premises Act is very important. The Court cited to  
2 it when it issued its memorandum decision May 19, 2003 and  
3 specifically referred to Section 57-22-4 subpart (2) which  
4 requires notice.

5 That's the legal issue we're talking about relative to  
6 this case is if they're going to claim that the premises are not  
7 habitable, they have a legal duty to provide notice.

8 Now there was some complaining about minor items, but  
9 that doesn't rise to a level of giving Ms. Myrah adequate notice  
10 that, you know, such and such isn't done. The premises are not  
11 fit for human habitation or that, you know, "We're not going to  
12 pay rent," or something like that.

13 The Court also cited Section 57-22-3 and 4, which have  
14 provisions about what the owner can do. She can decide to fix  
15 the property and let them stay there, or she can say, "No, I  
16 won't fix it." If it's an issue of habitability, she had the  
17 option of saying, "No, I won't fix it," and offering them the  
18 option to move out.

19 She's been deprived of that in the circumstances that  
20 are before us. So fairness in this case under the circumstances  
21 that she be paid.

22 As far as consideration goes, every contract requires  
23 consideration. If these people are going to pay rent, they  
24 should get something in return. In this case they got something  
25 in return. They lived in these premises for a period of time and



1 signed an agreement saying what their obligations were and so  
2 forth.

3 But this argument that there's been a failure of  
4 consideration is really an argument that, "Hey, we don't think  
5 that the house was worth as much as the rent that were being  
6 paid." It's not a situation like FMA Financial where the house  
7 was left in Colorado and nobody bothered to come and pick it up.

8 So there is -- even though there is a subjective feeling  
9 that maybe there's consideration that's not enough, there's  
10 actually a written agreement that says it is enough. Because  
11 some consideration is given, as a matter of law, we have a valid  
12 and binding contract.

13 As far as the argument about the codes go, you know, I'm  
14 not as familiar with the building codes or the -- you know, these  
15 various codes as perhaps I'd like to be today, but you know, I  
16 know enough to know that there are some -- there are some  
17 important things beyond just what we've seen blacked up on the  
18 screen here today.

19 There is also notice requirements. There are also  
20 revisions that say when this code is applicable and when it's not  
21 applicable. We don't have evidence about when this house was  
22 built and how the codes apply to a house built in this period of  
23 time.

24 I can remember when I lived in a home in Salt Lake City  
25 that had an unfinished basement. I would never have said my own

1 home is uninhabitable because the basement was unfinished. So  
2 there's ways these codes apply, and that has not been explored  
3 with any relevant evidence in this case, your Honor.

4 So I think that it would be wrong to try to use the  
5 codes for anything except for guidance to say, "Okay, when is --  
6 when do we have a safety issue which threatened human life so  
7 that we have to find that, you know, people should not be living  
8 here." And an unfinished basement, while it may apply -- it may  
9 violate some code -- I'm not sure what the context is there, it  
10 certainly doesn't rise to a level that we'd say we don't want  
11 human beings to live in that unfinished basement. That's all,  
12 your Honor.

13 THE COURT: Thank you. Taking Mr. Sheff's arguments  
14 first, the Court rejects the argument that there is insufficient  
15 consideration in this matter. The consideration was the rent  
16 paid for the premises that was afforded. Each residential rental  
17 unit shall have electrical systems, heating, plumbing, hot and  
18 cold water, and that was done. There may have been times and  
19 occasions where it may have been uncomfortable, inconvenient, but  
20 certainly habitable.

21 So the second point the Court makes is that I reject the  
22 argument that this was an inhabitable situation; and by violation  
23 of the Utah Fit Premises Act as well as the Salt Lake County  
24 Health Codes, the Court does not accept the proposition that  
25 violations of those, if any there be shown, is therefore

1 conclusive inhabitable.

2           The Courts finds there's insufficient evidence to  
3 determine whether or not under the Utah Fit Premises Act as well  
4 as the Salt Lake County Health Code there was violations. But  
5 even if there were, that does not mean conclusively that the  
6 residence were inhabitable.

7           As complained about, air conditioning, people lived  
8 without air conditioning for years. The prior tenant even  
9 testified that that swamp cooler never worked when he was there,  
10 and he just didn't do anything about it, but he remained in  
11 possession of the premises.

12           Furthermore, 23 months has passed since the beginning of  
13 this lease, and the renewal of the lease; and by virtue of that,  
14 I think it's hard pressed to say that they were living in  
15 inhabitable situations under that. So the Court has addressed  
16 that. I will return to Mr. Sheff's argument after making some  
17 observations and findings regarding the plaintiff's case.

18           As to the plaintiff's case, the Court is convinced that  
19 the lease agreement of June 9<sup>th</sup>, 1998 was signed. It does say,  
20 "Modifications to agreement: None." The Court has previously  
21 ruled that I looked at that as indication of -- well, I'm stuck  
22 with that, based upon the request for admissions.

23           So while "none" may not have appeared on the first and  
24 second renewal forms, the fact that they were left blank also is  
25 without question, and that has the same effect as it being none.

1           That being said, the Court still does take into  
2 consideration some of the complaints of the Campbells, and as I  
3 indicated I will get to that later.

4           Accordingly, the Court finds that the renewal lease -- I  
5 mean, excuse me, that the original lease, the original rental  
6 agreement and the subsequent renewal agreement are both binding  
7 and controlling legal agreements in this matter.

8           With that in mind, the Court finds that the plaintiff is  
9 entitled to 90 -- \$85 for the loss -- for the -- \$85 for the late  
10 fee attendant to the P-3 exhibit of the letter, and by his own  
11 admission and by the date on the check of 4/7/00, it was late,  
12 and it was in contravention of the order. Plaintiff is entitled  
13 to \$85.

14           Plaintiff will not recover any of the requested money  
15 paid to Gus -- paid to Gus. The reason for that is complete lack  
16 of foundation as to what was done by Gus. I have no question  
17 that the plaintiff may very well have paid Gus that money, but I  
18 don't know what she paid it for. The Court does not have  
19 testimony from Gus. The evidence -- the exhibit was only  
20 admitted for the purpose of showing payment on the matter.  
21 There's no question that he was paid, but she's not entitled to  
22 it for lack of foundation and a lack of proof regarding what Gus  
23 may or may not have done.

24           The premises, going back again to Mr. Sheff's argument  
25 about the inhabitability of the premises. Even if the premises

1 may have been inhabitable at the time of the lease, I have to  
2 look at P-8 whereby it's a three-page document. I look at the  
3 9/11/1998 entry by Michael Dalley indicating that the violations  
4 and the inspection occurred and certain requirements were done.

5 I look further at the 9/28/1998 entry that says, "Met  
6 with owner and renter and went through the house. All problems  
7 have been completed." That ends that.

8 The problem with the 2000 -- the 5/9/2000 report -- and  
9 I will address in a minute -- does not indicate that there was  
10 any curing of those problems. But that was at the same time  
11 contemporaneous with the moving out of the Campbells from the  
12 premises shortly after -- shortly around the end of May in June.  
13 So while there may not -- there may have been questions with the  
14 condition, they moved out at that time, and to me that's a non-  
15 issue.

16 Plaintiff is entitled to the sewer -- Sandy City sewer  
17 or water bill of \$122.37. She is entitled to the rent of \$1,095  
18 which was not paid for June. I think she waived the late fee in  
19 that matter. Am I correct, Mr. Roundy, that one of the late fees  
20 was waived?

21 MR. ROUNDY: We're asking for the late fee. The late  
22 fee that she waived was prior, like November or December of --

23 THE COURT: So she's entitled to the \$1095 plus the late  
24 fee, but hold off on that amount. She is not going to receive  
25 63-and-a-half hours -- I mean 63-and-a-half -- yes -- hours at

1 \$20 an hour for clean up in this matter. Her testimony to the  
2 Court was incredulous that she could perform that much work in  
3 the cleaning up of the premises.

4 Furthermore, \$20 an hour for essentially clean up labor  
5 is much too high. The Court -- and she's asking for \$1270. The  
6 Court would reduce that amount totally to \$500 in which she is  
7 entitled to.

8 Furthermore, as to the receipts of 332.14, the Court  
9 will not make a finding either way as to whether or not that's  
10 reasonable or necessary, because I'm lumping those all together  
11 and including those in the \$1100 damage deposit that was  
12 previously given to them. So that offsets that amount right  
13 there.

14 Finally, as to the general conditions of the home, we  
15 have testimony that it was somewhere between -- well, we had  
16 testimony to the extremes that it was a hobble to the -- maybe to  
17 be on the parade of homes. The testimony, as always in cases  
18 like this, the truth lies somewhere in between.

19 I don't believe that it was a hobble, or else the  
20 Campbells truly were in danger by moving in. They did move in.  
21 They used their best efforts to, but it was uncomfortable and  
22 inconvenient, even including through the 23 months. On the other  
23 hand, it was not crystal clean. It was not immaculate. It  
24 couldn't have been.

25 I'm looking at the testimony, I think, of Bonnie Strong,

1 who was probably one of the strongest independent witnesses. She  
2 was a real estate agent. She was aware of the conditions of the  
3 house. She was a neighbor. She knew the history of that house.  
4 That house had some hard living in it, from what I understand.

5           It was a rental property. People came. People went.  
6 People did not take care of the yard, did not take care of the  
7 premises. There was some wear and tear. In this regard, normal  
8 wear and tear of a rental unit that has been hard lived is going  
9 to be -- is going to be hard for me to determine as to any  
10 damages in excess of that, but regardless of which I've already  
11 addressed the damage aspect by not granting any of the money  
12 from -- for Gus.

13           But that being said, while I said that she's ent -- that  
14 the plaintiff is entitled to the rent and the late fee for June  
15 that she -- they missed, the Court is going to make an equitable  
16 adjustment because over 23 months of living in that house under  
17 the conditions that have been described, which have been  
18 unbearable, which have been inconvenient, which have been  
19 uncomfortable, but habitable -- but habitable, the Court is going  
20 to make an equitable offset and forgive that last month's rent  
21 and the fees -- and the late fees. So whatever is left the  
22 plaintiff is entitled to.

23           Finally, because neither side has prevailed in this  
24 matter to the Court's satisfaction as to a prevailing party,  
25 neither side are entitled to attorney's fees. Each bear their

1 own attorney's fees. Whatever the numbers are on that, that's  
2 the judgment. Prepare it, Mr. Roundy. Anything more, Mr. Sheff?

3 MR. SHEFF: No, your Honor. I can't think of anything,  
4 other than we wanted to separate the basement from the rest of  
5 the house with respect to the habitability determination.

6 THE COURT: You know, you got quite a bit out of me.  
7 Don't push too much.

8 MR. SHEFF: I understand, your Honor.

9 THE COURT: Mr. Roundy, anything more?

10 MR. ROUNDY: Yeah. I do have a question.

11 THE COURT: Certainly.

12 MR. ROUNDY: The Court indicated that it would give \$500  
13 for the 63-and-a-half hours.

14 THE COURT: Right. And even assuming I gave all the  
15 receipts, what I did was offset that against totally the \$1100 --

16 MR. ROUNDY: Right.

17 THE COURT: -- of the deposit.

18 MR. ROUNDY: My question -- I've got a couple of  
19 questions. One, the Court hasn't addressed the linoleum. That  
20 was not paid for through Gus Dixon.

21 THE COURT: That's right. And the next one?

22 MR. ROUNDY: The next one is if the Court awards nothing  
23 for the linoleum, we've got \$500 for the cleaning, \$332.14 for  
24 receipts. That's less than the \$1100 deposit. Is that Court  
25 saying we have to give back --



1 THE COURT: No. I'm saying no, that you get all of the  
2 \$1100, which would include the also the normal wear and tear that  
3 the Court has indicated that's hard for me to determine.

4 MR. ROUNDY: So the rest to the \$1100 applies to normal  
5 wear and tear?

6 THE COURT: Exactly.

7 MR. ROUNDY: Okay.

8 MR. SHEFF: So your Honor, just with respect to the  
9 math, then. There was \$500 for clean up, \$120.37 for the  
10 utilities, \$85 --

11 THE COURT: Well, wait a minute. I didn't give the \$500  
12 for clean up. Didn't you hear? I offset that against that  
13 \$1100.

14 MR. SHEFF: Okay. That's what I was --

15 THE COURT: Okay. So what I've got is I've got the  
16 122.37 service bill. I've got the late fee of \$85. I've offset  
17 on an equitable setoff the last month's rent and the late fee.  
18 No attorney's fees.

19 MR. SHEFF: Got it.

20 THE COURT: So for about \$200 we've spent two days in  
21 trial.

22 MR. SHEFF: Thank you, your Honor.

23 THE COURT: Whatever the numbers are, the numbers are,  
24 Mr. Roundy, and you prepare the judgment on it.

25 MR. ROUNDY: Yeah. My final question, though, about the

1 linoleum. Is the Court awarding zero for the linoleum?

2 THE COURT: Zero for the linoleum. I'm covering all  
3 that in normal wear and tear. Normal wear and tear on a house  
4 that's had some very hard living. So what I'm saying is that  
5 normal wear and tear on a hard living house is a lot of damage.

6 Thank you. Prepare the order. We're in recess.

7 (Trial concluded)