



November 2006

## IOWA LANDLORD ASSOCIATION NEWSLETTER

### ILA LEADERSHIP AND CONTACT INFORMATION

Dennis McDonald  
Association Executive  
Legislative Committee Chair  
mcdonald@raccoon.com  
515.270.2796

Mary Spain  
Public Relations Committee Chair  
mspain@apartmentfinder.com  
515.327.0606

Melissa Johnson  
Membership Chair  
mjohnson@petersoncompanies.com  
515.223.1010

Tina Padavich  
Education Chair  
tinap@executivers.com  
515.273.9419

Tom Newton  
Vendor Co-Council Chair  
tomn@gormanroofingservices.com  
515.883.0838

Rocky Sposota  
Vendor Co-Council Chair  
Tubwrx@aol.com  
515.202.9858

David Sollenbarger  
ILA President  
Corporate Director  
sollenbarger@iowalandlord.org  
515.274.1628



Thank you to all who attended the Mold class on the 10th of last month. It was a great turnout and a very informative session on the complex situations that property owners face in dealing with mold.

Mark your calendar for the 9th of November. That is the date for the trade show put on by the ILA Vendor Council to be held at the Sheraton Hotel in West Des Moines. Let's show up and support our vendor members. There will be lots of prizes. Look for all the details on page two of this newsletter.

Be sure to check out all the updates on the ILA website:  
[www.iowalandlord.org](http://www.iowalandlord.org).

A big thanks to the following for the contributions to date to the ILA-PAC:

Robert Davis  
Steve Williams  
Mary Lile  
Gary Fox  
Roger Wahl  
Lynner Real Estate Investment  
Brian Jerome  
Vitus Gerkin  
Jeanette Webb  
Brian Wentz  
Orville & Nancy Bunker  
Bruce Lefkow  
Audene Hansen  
Michael Anderson  
Garry & Lila Smith  
Ron Woods  
Duane Leonard  
David Carlson  
Orlene Narland

### Welcome New Members

William Reuss, West Des Moines, Iowa  
Steve Bruce, West Des Moines, Iowa  
John Morton, Bondurant, Iowa  
Kimberly Reed, Des Moines, Iowa  
James Ervin, Mason City, Iowa

### People on the Move

Lindsey Rittland is the new manager at Bristol Apts.



## Meet a Vendor



Based in Chicago, Apartments.com is known for its personalized searches, 360-degree virtual tours, and affiliation with more than 150 newspapers, including *The Des Moines Register*. With current projections, the site is on target to drive over 20% more visits and an estimated 25% more leads to advertisers than in 2005.

Through customized searches of its nationwide database, professional photography, in-depth detail for each apartment, maps and driving directions, and instant contact with property managers, apartments.com helps reduce the time spent finding an apartment.

For information, contact *The Des Moines Register* account executives Denise Wildman at 284-8231, Heather Barglof at 284-8058 or Sarah Sinclair at 284-8175.



### 2006 ILA TRADESHOW

The ILA Tradeshow kicks off Nov. 9, 2006, at the Sheraton Hotel  
1800 50th Street, West Des Moines  
2 to 7 p.m.

Meet your area vendors as well as new vendors who support your ILA.

Bring your whole team! Everyone is welcome! Don't forget to bring lots of business cards for networking.

Register with vendors for prize drawings every half hour.

Plus, the grand prize drawing of a **big screen TV** to close the show.

Free tailgate food. Keg kick-off at 4 p.m.  
Hope to see all of you there!

Each month we will be featuring a different vendor in our "Meet a Vendor" section of the newsletter. These vendor members can be a great asset to your business. Be sure to read about all the services they offer. Your ILA vendor members are:

Accurate Pest Control, A+ Lawn & Landscaping, Allstate Gutter, Apartment Finder, Artistic Waste Services, Baker Electric, Beisser Lumber, Corn/Instant Furniture, DeWitt Painting, Furniture Options, Flooring Warehouse, Gorman Roofing Services, Mark Hanson Atty., Jetz Service Co., Kness Signs, Marriott Execustay, Neiman, Stone & McCormick, P.C., Page-Hawyeke Legal Services, Pro Team Carpet Care, Qwest, Rent.com an ebay company, Sherman-Williams, State Farm Insurance Companies, Stitzell Electric Supply Co., Suncourt, Inc., *The Des Moines Register*, The Iowa.net dba Vacancy4rent.com, Tubwrx, Inc., Venture Mgmt. and Wright Tree Care.



### ASK AN ATTORNEY Legal Q & A

by Mark V. Hanson  
Attorney at Law,  
Whitfield & Eddy, P.L.C.

[hanson@whitfieldlaw.com](mailto:hanson@whitfieldlaw.com)

#### Question:

What defense or remedy does a landlord have when a tenant claims there is mold in the rental and they want to use that as a basis for terminating the lease early?

#### Response:

There will not be specific statutes or cases addressing mold in a rental property regarding this topic. You would look to the statute regarding tenant remedies if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with the

landlord's obligation to maintain fit and habitable condition and compliance with building and housing codes. See Iowa Code Sections 562A.15 and 21 to 26.

If the tenant claims there is a breach, the tenant has certain procedures to follow.

Section 21. The tenant shall deliver written notice to the landlord specifying the acts and omissions constituting the breach, and that the rental agreement will terminate in seven days if the breach is not remedied. If the agreement is terminated, the landlord is obligated to return prepaid rent and security deposit. If the landlord remedies the breach, the rental agreement shall not terminate. A tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant.

The tenant potentially may recover damages and injunctive relief unless the landlord demonstrates affirmatively the landlord has exercised due diligence and effort to remedy and

failure to remedy was due to circumstances reasonably beyond the landlord's control. If noncompliance is willful, the tenant may recover reasonable attorney fees.

In an action for possession for nonpayment of rent, the tenant may counterclaim on damages, see Section 24; or correct deficiencies and deduct the amount claimed, see Section 27.

I suppose the tenant could claim casualty damage—mold, giving rise to right to vacate under Section 25.

So, in this instance, the claimed breach is mold which the tenant claims makes the rental uninhabitable. First question, did the tenant in any way cause the condition? Did they do something like rip the sink off the wall, knock over the stool or let the tub run over which caused the mold? If so, I would argue they have no basis to claim breach. Second question, does the mold make the rental in violation of the housing code affecting health and safety? That would be a fact question, and what evidence or testimony does the tenant or you have to assert your position? Is it a little mold, or a lot? Where is it? What kind is it? Third question, does it make the premises not fit and habitable? That, again, is a fact question.

Regardless, the tenant is still going to need to give you notice and opportunity to remedy the claimed deficiency. If they do not then they have failed to follow their required procedure. Fourth question, what effort is the landlord making to get rid of the mold? Is the landlord taking reasonable, accepted, normal steps to get rid of the mold? And, can the landlord claim the condition is remedied to prevent rental agreement termination? Or, if necessary, claim the landlord exercised due diligence and effort to remedy, which if it did not cure at lease, proves non-cure was due to circumstances reasonably beyond the control of the landlord.

What are the landlord's remedies and options? For one, the landlord would want to evaluate and try to do what can be done regarding the mold problem. Have someone with some expertise in mold involved as to inspection and remedy options. Take reasonable measures to remedy. Have someone with expertise advise you on the merits of the tenant's claims, and prepare your claims or defenses as appropriate.

Then make your claims or defenses if the tenant vacates or makes a damage claim against you. Remember, if you sue the tenant for the unexpired term, you are going to need to prove you took necessary steps to re-rent the unit to someone else. And, you may need to prove the mold either was not a justification to terminate, it was remedied or perhaps the tenant caused it.

*"The determination of the need for legal services and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements or self-proclaimed expertise. This disclosure is required by the rule of the Supreme Court of Iowa."*

### **Tips on Contacting Your Legislator**

When contacting your Iowa legislator, representative or senator, remember these points when writing to them.

- 1) Be as brief as possible, but tell your story.
- 2) Do not worry about typing unless your handwriting is unreadable.
- 3) Always ask the legislator to answer your letter.
- 4) If the action you are asking for is something you have pursued elsewhere, tell them what you have tried and if you were helped or ignored.
- 5) Offer to give or to obtain more information, if applicable.
- 6) Keep a copy of the letters you write and the responses you get.
- 7) If you have an issue for which you do not know if the state can help, do not hesitate to write to your own congressman.



## **Raising Rent**

Sticker shock. It can happen for a tenant just like when they or you look at the prices of a new car. In a rising market when a rental renewal notice is sent with a rent increase, tenants may become angry and want to vacate.

Sharing comparisons with an educated tenant can help. To prevent sticker shock, the manager must know the market and what other landlords are charging. This knowledge base will help you defend your decision and the amount you have proposed as an increase.

Once the tenant knows that the market is asking a certain level of rental income, then the tenant will not seem as agitated.

For BIG rental increases, you may want to phase in the increase. Work with your tenants to educate them and possibly to a small upgrade. A "phase in" approach may minimize the "sticker shock" of a rental increase.

## November 2006

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5	6	7	8	9	10	11
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26	27	28	29	30		

7 Election Day

9 ILA Tradeshow—Sheraton Hotel  
1800 50th St., West Des Moines  
2 to 7 p.m.

11 Veterans Day

16 Vendor Council Meeting 4 p.m.  
Fratello's

23 Thanksgiving—ILA Offices Closed

## December 2006

S	M	T	W	T	F	S
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24	25	26	27	28	29	30
31						

12 Executive Committee Meeting  
11:30 a.m. OEV Office

16 Hanukkah

21 Vendor Council Meeting 4 p.m.  
Fratello's

25 Christmas—ILA Offices Closed