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Comment[†]

A “Spoonful of Sugar” Won’t Make This Go Down: Analyzing the Enforceability of Automatic Carpet Cleaning Clauses in Nebraska

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I. INTRODUCTION

Landlords often increase their income by including pet fees, late payment charges, and non-refundable carpet cleaning fees taken from security deposits.¹ These specific lease provisions often go unnoticed and, therefore, uncontested by tenants without knowledge of their rights under state-specific landlord-tenant acts.² While tenants remain uninformed about the law, landlords will continue increasing profits in otherwise impermissible ways.

Non-refundable carpet cleaning fees, otherwise known as automatic carpet cleaning provisions,³ are typically withheld from a tenant's security deposit.⁴ Courts in several states recently considered the legality of these provisions.⁵ Tenants who have contested the fees often argue that withholding a carpet cleaning fee from a tenant's security deposit, specifically a tenant who has abided by all the provisions in his or her lease, penalizes them and results in landlord profiteering when more money is withheld than it takes to clean the floors.⁶

Luckily, the passage of the Uniform Residential Landlord Tenant Act (URLTA) in 1972, which attempted to remedy the “imbalance in the relative bargaining powers of landlord and tenant,” prompted state legislatures to pass their own versions of the URLTA.⁷ Unfortunately, inherent issues lie within individual states' landlord-tenant acts—namely with those acts that are silent on the

¹ See 83 AM. JUR. *Trials* 385, § 5 (2002) [hereinafter *Trials*].

² Joel Kurtzberg & Jamie Henikoff, *Freeing the Parties from the Law: Designing an Interest and Rights Focused Model of Landlord/Tenant Mediation*, 1997 J. DISP. RESOL. 53, 71–72 (1997) (explaining that tenants frequently forfeit “their formal legal protections by failing to assert them” and specifically noting that a tenant will answer in a manner that effectively asserts his or her legal rights only 15.6% of the time).

³ Stephen L. Harmel, Jr., *Security Deposit Reform: To Provide Protection for Those Who Protect Us*, 67 BAYLOR L. REV. 435, 446–48 (2015).

⁴ *Trials*, §§ 5, 17.

⁵ See generally *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155 (Iowa 2016) (concluding that automatic carpet cleaning provisions are unenforceable due to limiting of the landlord's statutorily-created burden of proving damages); *Albrecht v. Chen*, 477 N.E.2d 1150, 1153 (Ohio Ct. App. 1983) (finding that a landlord must prove damages by way of itemization, and that automatic carpet cleaning provisions undermine that burden).

⁶ Jodie Leith Chusid, Comment, *The Oregon Residential Landlord and Tenant Act: The Time for Reform*, 77 OR. L. REV. 337, 347–48 (1998).

⁷ Jeffrey C. Smith, *The New Uniform Residential Landlord and Tenant Act: Balancing the Scales of Justice in the Landlord-Tenant Relationship*, 67 ALA. LAW. 422, 423 (2006) (internal quotations removed) (quoting Brian J. Strum *et al.*, *Proposed Uniform Residential Landlord and Tenant Act, Report of Subcommittee on the Model Landlord-Tenant Act of Committee on Leases*, 8 REAL PROP. PROB. & TR. J. 104, 108 (1973)).

validity of certain lease clauses.⁸ The silence ultimately allows landlords to continue to exploit tenants until judicial or legislative action is taken. Some states have begun to take specific action against automatic carpet cleaning clauses.⁹ However, other states like Nebraska will likely remain silent until the issue arises, begging the question of the legality of such clauses in Nebraska.

Part II of this Comment begins by briefly explaining what carpet cleaning provisions are, including how they are crafted and how tenants' money is often used. It then summarizes Nebraska and other states' landlord-tenant statutes, emphasizing relevant security deposit and tenant obligation requirements, in an effort to explain further sections of the Comment. Part II also defines "ordinary wear and tear" to aid in comprehension of landlord and tenant obligations. Lastly, it details the analysis and outcomes of particular court decisions and compares relevant statutes with the decisions to provide further understanding of the outcomes.

Part III of this Comment recommends how Nebraska courts should treat automatic carpet cleaning provisions. An analysis of Nebraska's landlord-tenant statutes follows, highlighting why the statutes should be read to support the recommendation. Finally, the Comment will compare and contrast other states' landlord-tenant statutes with Nebraska's to further predict Nebraska's stance on the issue of automatic carpet cleaning provisions.

⁸ Compare IOWA CODE ANN. § 562A.12(3)(a)(2) (West through 2019 Reg. Sess.) (permitting a landlord to withhold a security deposit to "restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted" as well as establishing a burden of proof for landlords by requiring them to provide an itemized list for charged damages), *with* L.B. 433, 106th Leg., 2019 Sess. (Neb. 2019) (recently codified at NEB. REV. STAT. § 76-1416 (Reissue 2018)) (allowing landlords to apply security deposits to the payment of damages suffered "by reason of the tenant's noncompliance with the rental agreement or section 76-1421," which excepts ordinary wear and tear). The Nebraska statute is silent on whether landlords must prove damages beyond normal wear and tear, but does mention that landlords must provide an itemized list should the landlord demand payment. § 76-1416.

⁹ See, e.g., *De Stefano*, 879 N.W.2d at 190–91 (concluding that automatic carpet cleaning deductions were illegal because a tenant who abides by the lease provisions should not be charged for unnecessary cleaning); *Smolen v. Dahlmann Apts., Ltd.*, 338 N.W.2d 892 (Mich. Ct. App. 1983) (holding that where a unit that has not suffered damages, a landlord may not withhold cleaning charges from a tenant's security deposit); *Albrecht*, 477 N.E.2d at 1153 (noting that a landlord must show a specific need to charge for carpet cleaning). Courts have interpreted the relevant landlord-tenant statutes and applied them according to legislative intent and other interpretation techniques, ultimately causing these courts to find in favor of tenants. See *De Stefano*, 879 N.W.2d at 190–91; *Albrecht*, 477 N.E.2d at 1153.

II. BACKGROUND

A. Automatic Carpet Cleaning Provisions

Mandatory carpet cleaning clauses are exactly as they sound. After residents move out, landlords clean units' floors in order to make them suitable for the next tenants.¹⁰ The cleaning is customarily done between each successive tenant and will usually be done whether the tenant pays for the cleaning or not.¹¹ Cleaning fees range from \$100–\$150,¹² “which generally exceeds the actual cost to hire a professional service to clean a one-bedroom apartment.”¹³ Landlords often do not inform the tenant of the actual cost of carpet cleaning, which allows landlords to allege costs without accurately documenting them.¹⁴

Automatic carpet cleaning fees may be crafted to comply with the state's landlord-tenant act to ensure the legality of the charge.¹⁵ Landlords will draft leases in specific ways to make automatic carpet cleaning clauses enforceable, especially in those states where the provisions have been found unenforceable.¹⁶ For example, the lease's language may include the explicit condition the premises must be returned in because detailing the exact condition gives the

¹⁰ Chusid, *supra* note 6, at 347.

¹¹ *Id.* at 347–48.

¹² For example, the average carpet cleaning fee in Lincoln, Nebraska, when considering Commercial Investment Properties and Century Sales and Management, both prominent landlords in the area, is \$100. Commercial Investment Properties, Apartment Lease Contract (Aug. 21, 2018) [hereinafter *CIP Lease*] (on file with Nebraska Law Review) (not directly stating that there is a carpet cleaning fee, but that the tenant agrees to have the landlord professionally clean all floors and, in the preceding sentence, taking a “lease charge of \$100.00” from the security deposit); Century Sales and Management, Lease Contract (Dec. 28, 2017) (on file with Nebraska Law Review). The typical cost to clean an average-sized one-bedroom apartment in the Lincoln area is approximately \$75. LNK Cleaning Company, Apartment Floor Cleaning Estimate (Aug. 28, 2018) (on file with Nebraska Law Review).

¹³ Chusid, *supra* note 6, at 347.

¹⁴ John S. Hollyfield, *Landlord's Services*, ST054 ALI-CLE 227, 230 (2012).

¹⁵ See *Walton v. Gaffey*, 895 N.W.2d 422, 427–28 (Iowa 2017) (explaining that so long as a carpet cleaning fee is not automatically taken from the security deposit, such a clause may be enforceable); see, e.g., *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155 (Iowa 2016) (holding that provisions for automatic carpet cleaning deductions to be taken from security deposits are unenforceable because landlords have a burden of proving damages from tenant noncompliance with the rental agreement or with the law).

¹⁶ See *De Stefano*, 879 N.W.2d at 183–84 (indicating that an automatic carpet cleaning provision may be enforceable so long as it is not taken from the rental deposit).

landlord greater breadth in determining whether the tenant has complied with the lease agreement.¹⁷

Leases may also disguise carpet cleaning provisions as “lease charges.”¹⁸ Such leases contain, for example, the following language: “Resident agrees that the Agent will have all flooring professionally cleaned when the Resident has vacated the premises. A lease charge of \$100.00 will be deducted from the deposit upon vacating the premises.”¹⁹ This form of provision strongly indicates that the lease charge is to fund the cleaning of the floors upon vacating the apartment, which is akin, if not identical, to an automatic carpet cleaning provision. Finally, some leases may structure the carpet cleaning expense as a fee, instead of taking it from the security deposit.²⁰ In reality, however, most carpet cleaning fees are withheld from security deposits, whether they be explicitly withheld or disguised. Withholding the fees from security deposits raises issues when analyzing states’ landlord-tenant acts and determining the clause’s enforceability against a tenant.

B. Relevant Landlord-Tenant Statutes

Landlord-tenant acts typically discuss security deposits in terms of (1) how they may be used, (2) what amount may be charged, and (3) the burden of proof landlords must meet if they retain tenants’ security deposits.²¹ While the definition of “security deposit” varies among the statutes, most agree that a security deposit is a deposit paid to “secure performance of a residential” lease.²²

¹⁷ See, e.g., *Castillo-Cullather v. Pollack*, 685 N.E.2d 478 (Ind. Ct. App. 1997) (establishing the ability of the parties to define and agree to the terms of the lease agreement), *abrogated in part on other grounds by Mitchell v. Mitchell*, 695 N.E.2d 920, 922 (Ind. 1998). When landlords define the exact condition an apartment must be returned in, they are ultimately allowed to contract out of ordinary wear and tear condition, thus permitting landlords to enforce a near-perfect return policy. *Id.*

¹⁸ *CIP Lease*, *supra* note 12.

¹⁹ *Id.*

²⁰ *Walton*, 895 N.W.2d at 427–28.

²¹ See IND. CODE ANN. §§ 32-31-3-12–14 (West through First Reg. Sess. of the 121st Gen. Assemb.); IOWA CODE ANN. § 562A.12 (West through 2019 Reg. Sess.); NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)). Seemingly all statutes regarding when a landlord may withhold a security deposit establish some kind of burden of proof that landlords must meet in order to show damages and properly withhold money from security deposits. § 562A.12; § 76-1416.

²² IOWA CODE ANN. § 562A.6(12) (West through 2019 Reg. Sess.); see also IND. CODE ANN. § 32-31-3-9 (West through First Reg. Sess. of the 121st Gen. Assemb.) (defining “security deposit” as a deposit paid to “secure performance of any obligation of the tenant under the rental agreement”); OHIO REV. CODE ANN. § 5321.01(E) (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)) (defining a “security deposit” as a “deposit of money or property to secure performance by the tenant under a rental agreement”); NEB. REV. STAT. § 76-1416

1. Nebraska

When charging a security deposit to a tenant, Nebraska demands that its value not be in excess of one month's periodic rent.²³ Nebraska's security deposit statute, as amended in 2019, continues: "Upon termination of the tenancy, property or money held by the landlord as prepaid rent and security may be applied to the payment of rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with the rental agreement or section 76-1421."²⁴

Section 76-1421 notes the tenant's obligation to maintain the dwelling unit and also states certain requirements such as not deliberately or negligently destroying the premises, keeping the premises safe and clean, and, upon termination, keeping the unit in as clean a condition as when the tenancy began, excepting ordinary wear and tear.²⁵ Amended section 76-1416 continues by adding that a landlord automatically must provide the balance of the security deposit and a written itemization of any costs stemming from damages or other deductions to the deposit fourteen days after termination of the tenancy.²⁶

(Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)) (stating that landlords may receive "security" in the form of a security deposit). Because security deposits act as security for a tenant's compliance with the rental agreement and the law, noncompliance with either permits the landlord to withhold all or a portion of the security deposit in order to remedy the damages stemming from the noncompliance. § 562A.12; *see also* Kraus v. Trinity Mgmt. Servs., Inc., 999 P.2d 718, 734 (Cal. 2000) (defining "security" as a charge imposed to secure a landlord against future tenant defaults, and not a reimbursement for the landlord for expenses incurred in providing application forms, screening applicants, and listing apartments or the like), *superseded by statute on unrelated grounds*, 2004 Cal. Legis. Serv. Prop. 64, § 2 (West), *as recognized in* Arias v. Superior Court, 46 Cal. 4th 969, 209 P.3d 923 (2009).

²³ NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)). The amount demanded in the form of a security deposit is often limited to one month's rent in order to strike "a fair balance between the landlord's need for adequate protection and the tenant's right to receive the security deposit back in a timely manner when appropriate." Richard L. Costella & Christopher S. Morris, Comment, *West Virginia Landlord and Tenant Law: A Proposal for Legislative Reform*, 100 W. VA. L. REV. 389, 414 (1997).

²⁴ § 76-1416.

²⁵ *Id.*

²⁶ *Id.* (establishing a burden of proof that landlords must meet in order to properly withhold a security deposit. Without the written balance and itemization, tenants are not provided with a justifiable reason for the withholding of all or a portion of their security deposit); *see also* Costella & Morris, *supra* note 23, at 414 (emphasizing that the requirement for landlords to provide itemized lists of damages acts as a further disincentive for landlords to improperly withhold security deposits). If landlords wrongly withhold money, tenants' reasonable attorneys' fees will be imposed on them. § 76-1416; *Black v. Brooks*, 285 Neb.

2. Iowa

In comparison, Iowa’s security deposit statute—which uses the term “rental deposits”—more specifically details security deposits and how landlords can manipulate them.²⁷ Iowa states that a landlord cannot receive a security deposit in excess of two months’ rent and may only withhold a deposit for certain specified reasons.²⁸ Iowa clarifies that a “landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons”: to remedy a default in rent by the tenant, “[t]o restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted,” and to recover expenses incurred from a surrendering tenant.²⁹

If a landlord does withhold a security deposit, he or she must provide specific reasons for withholding the deposit.³⁰ If the security deposit is withheld for purposes of restoration, the landlord must also specify the nature of damages.³¹ The statute provides that the “burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit” falls on the landlord.³² Iowa courts have supported this interpretation by holding that its statutes require the landlord to provide written, itemized statements regarding the reasons for withholding security deposits.³³ This ultimately limits landlords’ ability to demand that automatic carpet cleaning fees be withheld from security deposits.

440, 444–45, 827 N.W.2d 256, 260 (2013) (allowing a pro bono litigant to receive reasonable attorney fees because the landlord acted willfully, thus entitling the tenant to such fees).

²⁷ § 562A.12.

²⁸ *Id.*

²⁹ *Id.* Leases should also spell out the conditions that permit the withholding of a security deposit that exist alongside the statutorily-created conditions in order to justify the withholding through itemization. Tom G. Geurts, *The Historical Development of the Lease in Residential Real Estate*, 32 REAL EST. L.J. 356 (2004). Without itemization, provisions that appear to be penalties are generally found unenforceable. *Id.*

³⁰ § 562A.12.

³¹ *Id.*

³² *Id.*

³³ See *Kline v. SouthGate Prop. Mgmt., LLC*, 895 N.W.2d 429 (Iowa 2017); *Caruso v. Apts. Downtown, Inc.*, 880 N.W.2d 465 (Iowa 2016); *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155 (Iowa 2016). This outright prohibition greatly differs from Nebraska’s statute in that it clearly provides a burden of proof the landlord must satisfy in order to legally withhold a security deposit from a tenant, thus protecting the tenant from exploitation by the landlord. See § 562A.12.

3. Ohio

Ohio's security deposit statute closely resembles that of Iowa's statutes.³⁴ Ohio's statute establishes requirements for a landlord when withholding a deposit.³⁵ The landlord may withhold a security deposit "by reason of the tenant's noncompliance with section 5321.05 of the Revised Code or the rental agreement."³⁶ Section 5321.05, much like its analog in Nebraska, details the tenant's obligations in a rental agreement.³⁷

The tenant is required to do certain things while in possession of the dwelling unit such as keeping the premises safe and sanitary, disposing of rubbish, and complying with state and local housing, health, and safety codes.³⁸ If the landlord withholds all or a portion of a security deposit, the landlord must provide itemized deductions in the form of a written notice to the tenant.³⁹ While not specifically stated, Ohio courts determined that the landlord-tenant statutes do permit ordinary wear and tear, which prohibits landlords from claiming damages for such conditions.⁴⁰

4. Indiana

Indiana's security deposit statute also allows the landlord to withhold all or a portion of a security deposit by reason of a tenant's noncompliance with the law or the rental agreement.⁴¹ However, the statute expressly limits the landlord's ability to withhold a security deposit to three permissible reasons: (1) as payment of accrued rent, (2) to reimburse for damages suffered by the tenant's noncompliance with the rental agreement or relevant Indiana law, and (3) to cover "unpaid utility or sewer charges" from the tenant as

³⁴ Compare OHIO REV. CODE ANN. § 5321.16 (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)), with § 562A.12. Notice that Ohio and Iowa both require noncompliance by the tenant with the rental agreement or the law and also establish a burden of proof for the landlord by requiring him or her to provide an itemized list of damages causing the security deposit to be withheld. § 5321.16; § 562A.12.

³⁵ § 5321.16.

³⁶ *Id.*

³⁷ OHIO REV. CODE ANN. § 5321.05 (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)).

³⁸ *Id.*

³⁹ § 5321.16.

⁴⁰ See *Weingarden v. Eagle Ridge Condos.*, 653 N.E.2d 759 (Ohio Mun. Ct. 1995) (holding that a mandatory carpet cleaning fee deducted from a security deposit was not enforceable, independent of evidence of damage above ordinary wear and tear, because it was inconsistent with the statute that requires a landlord to withhold only for the tenant's noncompliance with statutory obligations).

⁴¹ IND. CODE ANN. § 32-31-3-12 (West through First Reg. Sess. of the 121st Gen. Assemb.).

stipulated under the rental agreement.⁴² Further, the landlord cannot use a security deposit to reimburse for damages to the rental unit that are the result of ordinary wear and tear.⁴³

Indiana's statute is similar to the aforementioned statutes because it requires the landlord to itemize the estimated cost of repair for each damaged item and the amount the landlord intends to charge the tenant.⁴⁴ By requiring a landlord to itemize damages and their expected costs, the tenant is provided with documentation of repairs to the unit that are not the result of ordinary wear and tear, but rather due to the tenant's noncompliance.⁴⁵ Therefore, landlords cannot charge automatic carpet cleaning fees if the tenant has complied with the law and the rental agreement.⁴⁶

In sum, the previously mentioned statutes differ in clarity regarding when a landlord may withhold a security deposit. For example, Ohio, Indiana, and Iowa all demand that a landlord provide an itemized list of damages suffered, but some go as far as requiring landlords to detail the costs of repairs, and how much of those will be assessed to the tenant.⁴⁷ Nebraska has also statutorily required landlords to provide notice to tenants when returning their security deposits.⁴⁸ However, Nebraska has yet to conclude that automatic carpet cleaning provisions specifically are unenforceable, which has limited the burden on landlords in proving actual damages from the

⁴² *Id.* Reducing a landlord's ability to withhold a security deposit provides more protections for tenants who are already seen to be in a position of lesser bargaining power. Geurts, *supra* note 29. The ultimate motive behind enacting landlord-tenant statutes was to protect tenants by attempting to equalize the bargaining power and redistribute "wealth from landlord to tenant." *Id.*

⁴³ IND. CODE ANN. § 32-31-3-13 (West through First Reg. Sess. of the 121st Gen. Assemb.).

⁴⁴ IND. CODE ANN. § 32-31-3-14 (West through First Reg. Sess. of the 121st Gen. Assemb.).

⁴⁵ *See* § 32-31-3-13.

⁴⁶ *See id.*; § 32-31-3-12 (stating that a landlord may only withhold a security deposit if the tenant does not abide by the lease agreement or the law). The major difference between Indiana's statutes compared to those of Iowa and Ohio is that Indiana courts have placed importance on parties' ability to contract. *Castillo-Cullather v. Pollack*, 685 N.E.2d 478, 483 (Ind. Ct. App. 1997) (requiring a tenant to pay for carpet cleaning because she did not return the apartment in "good condition" and did not steam clean the unit's floors per the lease agreement before vacating the premises), *abrogated in part on other grounds by Mitchell v. Mitchell*, 695 N.E.2d 920, 922 (Ind. 1998). This ultimately allows landlords to charge cleaning fees if the tenant does not comply with the agreed-upon lease. *Id.* Landlords are allowed to dictate the condition the dwelling unit must be returned in and any other steps that must be taken before returning the premises, including steam cleaning the floors. *Id.*

⁴⁷ *See* OHIO REV. CODE ANN. § 5321.16 (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)); § 32-31-3-12; IOWA CODE ANN. § 562A.12 (West through 2019 Reg. Sess.).

⁴⁸ NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)).

tenant's noncompliance either with the rental agreement or applicable statutes.

C. Defining “Ordinary Wear and Tear”

All aforementioned statutes except from compensable damages ordinary wear and tear, but not all define it. This leaves some tenants exposed to exploitation by landlords defining it themselves without prior notice. For example, Iowa does not statutorily define ordinary wear and tear, so the courts had to attempt to interpret its intended meaning.⁴⁹

Iowa courts initially found that “words or phrases that are undefined in the statute or for which there is no established legal meaning are given their common, ordinary meaning in the context within which they are used.”⁵⁰ The landlord-tenant chapter is also “to be ‘liberally construed and applied’ to promote” the purpose of landlords’ right to receive rent.⁵¹ However, Iowa courts stopped short of defining ordinary wear and tear in the context of automatic carpet cleaning provisions because they focused instead on the provision’s ability to illegally eliminate the landlord’s duty of proving tenant noncompliance or damages.⁵² Nonetheless, tenants still receive some form of protection against landlords because Iowa has reinforced its view that automatic provisions are unenforceable without notice to the tenant detailing noncompliance or damages done by him or her.⁵³

Ohio has defined ordinary wear and tear as “simply that the tenant is not required to keep the premises in like-new or nearly new condition,” rather the tenant is merely required to keep the premises

⁴⁹ *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 168 (Iowa 2016). A majority of courts interpret the statutes to determine the enforceability of automatic carpet cleaning provisions rather than attempt to define “ordinary wear and tear.” *See generally id.*; *Mason v. Schumacher*, 231 Neb. 929, 439 N.W.2d 61 (1989) (focusing on the tenant’s duties under the lease agreement rather than defining “ordinary wear and tear”); *Albrecht v. Chen*, 477 N.E.2d 1150, 1153 (Ohio Ct. App. 1983).

⁵⁰ *De Stefano*, 879 N.W.2d at 168 (internal quotation omitted).

⁵¹ *Id.* at 179. However, the change in landlord-tenant law arose from the concern of tenants’ lesser bargaining power. Geurts, *supra* note 29 (stating that “judges often referred to the belief that tenants, in particular indigent ones, often have less bargaining power”). Legislatures enacting landlord-tenant statutes sought to equalize the powers of both landlords and tenants, often giving tenants the upper-hand in disputes, because the statutes overall favored tenants and limited landlord actions. *Id.*

⁵² *See, e.g., De Stefano*, 879 N.W.2d at 168 (focusing on the unenforceability of automatic carpet cleaning provisions rather than attempting to define “ordinary wear and tear”).

⁵³ *See id.*; *Caruso v. Apts. Downtown, Inc.*, 880 N.W.2d 465 (Iowa 2016); *Kline v. SouthGate Prop. Mgmt., LLC*, 895 N.W.2d 429 (Iowa 2017).

in serviceable and good repair.⁵⁴ When presented with the issue of automatic carpet cleaning provisions, Ohio and Iowa courts have similarly concluded that the burdens established for landlords must be met, which includes the landlord's duty to itemize damages.⁵⁵ Ohio courts have specifically held that "a landlord should not be allowed to escape the intent underlying the R.C. 5321.16(C) penalties by making a list of deductions."⁵⁶ By establishing a definition for ordinary wear and tear, and emphasizing the burden to be met by landlords before withholding a security deposit, Ohio courts have most clearly set out when it is proper to withhold tenants' security deposits.

Indiana slightly differs from Iowa and Ohio because it allows for the parties to a lease agreement to define the condition the premises must be returned in, and thus what ordinary wear and tear is and how much of it will be permitted.⁵⁷ However, absent an alternative agreed-upon definition, the court-defined version of ordinary wear and tear prevails.⁵⁸ In *Kishpaugh v. Odegard*, the Indiana court was presented with this need for definition as a matter of first impression regarding the landlord-tenant statute.⁵⁹ In seeking to "give effect to the intent of the legislature," the court looked to "the express

⁵⁴ See *Ohio Envtl. Dev. Ltd. P'ship v. Envirotest Sys. Corp.*, 478 F. Supp. 2d 963, 970 (N.D. Ohio 2007) (quoting *Capitol Funds, Inc. v. Arlen Realty, Inc.*, 755 F.2d 1544, 1549 (11th Cir. 1985)).

⁵⁵ See *De Stefano*, 879 N.W.2d at 168; *Smith v. Padgett*, 513 N.E.2d 737, 742 (Ohio 1987) (concluding that the itemized list of deductions must facially justify the deductions from the security deposit).

⁵⁶ *Smith*, 513 N.E.2d at 742 (explaining that the statute does not require bad faith on the part of the landlord, but that the landlord does have the burden of justifying any deductions from the security deposit). By enforcing the burden, the court stressed the importance of only deducting from the security deposit for justifiable reasons, which are generally damages stemming from the tenant's noncompliance, or any other damages listed in the statute. *Id.*; see also OHIO REV. CODE ANN. § 5321.05 (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)) (listing the obligations of the tenant, such as keeping the premises safe and sanitary and maintaining any appliances in working order).

⁵⁷ See *Castillo-Cullather v. Pollack*, 685 N.E.2d 478, 483 (Ind. Ct. App. 1997), *abrogated in part on other grounds by Mitchell v. Mitchell*, 695 N.E.2d 920, 923 (Ind. 1998). This is an agreement between the parties. *Id.* Although the parties technically agree to the terms and definitions when they contract, in reality the inequity between the parties results in landlords setting and defining the terms of the lease, leaving the tenant to either agree or look for another place to rent. See *Geurts*, *supra* note 29.

⁵⁸ *Castillo-Cullather*, 685 N.E.2d at 482–83. Indiana courts allow parties to define the condition that the premises must be returned in, such as in a "good condition," but if no such condition is established, then the standard of ordinary wear and tear prevails. *Id.*

⁵⁹ *Kishpaugh v. Odegard*, 17 N.E.3d 363, 376 (Ind. Ct. App. 2014) (explaining that because it was an issue of first impression, the court must undergo statutory analysis and ultimately define ordinary wear and tear to determine whether the tenant complied with the lease agreement).

language of the statute and the rules of statutory construction [to review] the statute in its entirety under the presumption that ‘the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results.’”⁶⁰ Giving “ordinary” its basic definition from the dictionary, the court concluded that it means “routine or usual.”⁶¹ In applying this definition to “wear and tear,” the court explained that the premises may be returned in a condition that would represent *routine* use of the unit in a *usual* fashion, but typically not consisting of deliberate acts such as cigarette burns in the carpet or a scorched fence.⁶²

Nebraska has yet to define ordinary wear and tear either in its statutes or in the courts. While Nebraska courts do mention ordinary wear and tear numerous times in their case law, they do not provide a definition for the term.⁶³ If Nebraska courts are presented with an issue that requires them to define the phrase, the courts will likely apply the same analysis as Indiana and implement the intended definition for the term due to Nebraska’s routine approach to statutory interpretation.⁶⁴

Generally, when presented with an undefined statutory term, Nebraska courts hold that “[i]t is fundamental that a statute will be examined as a whole in order to ascertain the intent of the Legislature.”⁶⁵ Furthermore, words of common usage do not need

⁶⁰ *Id.* (quoting *State v. Prater*, 922 N.E.2d 746, 748 (Ind. Ct. App. 2010)).

⁶¹ *Id.* at 377.

⁶² *Id.* (emphasizing that while the statutes do except for ordinary wear and tear, they do not “operate as a license for the tenant to destroy the landlord’s property”); *see also* *Castillo-Cullather v. Pollack*, 685 N.E.2d at 483 (defining ordinary wear and tear as damages “expected in the normal course of habitation of a dwelling”), *abrogated in part on other grounds by* *Mitchell v. Mitchell*, 695 N.E.2d 920, 922 (Ind. 1998). Damage that resembles something out of the ordinary, whether it is deliberate or accidental damage, is often outside of the scope of ordinary wear and tear. Harmel, *supra* note 3, at 444. These damages may be in the form of pet stains on carpets, but it is not clear what damage actually exceeds ordinary wear and tear, resulting in courts looking at the facts of each particular case to determine whether the damages surpass the limit. *Id.*

⁶³ *See generally* *Quist v. Duda* 159 Neb. 393, 67 N.W.2d 481 (1954); *Grand Island Sch. Dist. No. 2 of Hall Cty. v. Celotex Corp.*, 203 Neb. 559, 279 N.W.2d 603 (1979); *Mason v. Schumacher*, 231 Neb. 929, 439 N.W.2d 61 (1989).

⁶⁴ *See, e.g.*, *State v. Neal*, 187 Neb. 413, 417, 191 N.W.2d 458, 460–61 (1971) (explaining that a fundamental rule of statutory construction requires discovering the intent of the Legislature for the statute as a whole, and giving words of common usage that need not be defined in a statute their standard definition); *Rodehorst Bros. v. City of Norfolk Bd. of Adjustment*, 287 Neb. 779, 786, 844 N.W.2d 755, 763 (2014) (stating that zoning ordinances using words of common usage should be given their “generally accepted meaning”); *State v. Crowell*, 234 Neb. 469, 472–73, 451 N.W.2d 695, 699 (1990) (emphasizing that when statutory language is plain and unambiguous, “in the absence of a statutory indication to the contrary, words in a statute will be given their ordinary meaning”).

⁶⁵ *Neal*, 187 Neb. at 417, 191 N.W.2d at 460–61.

to be specifically defined because they will be given their plain and ordinary meaning.⁶⁶ Therefore, Nebraska courts attempting to define the term “ordinary” should give the term its basic definition of routine or usual, just as Indiana concluded.⁶⁷ This definition ultimately permits tenants to return a premises in a condition that shows routine use of an apartment in a usual or customary manner and pursuant to applicable Nebraska landlord-tenant statutes.⁶⁸

D. Relevant Case Law

The majority of case law in the Midwest surrounding the legality of automatic carpet cleaning fees come from three main states: Iowa, Ohio, and Indiana. With these being the only Midwestern states that have repeatedly handled automatic carpet cleaning provisions, it is logical to use them as guidance when determining Nebraska’s approach.⁶⁹ The majority of case law comes from Iowa, and no case addresses the issue more clearly than *De Stefano v. Apartments Downtown, Inc.*⁷⁰

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)); *Kishpaugh v. Odegard*, 17 N.E.3d 363, 377 (Ind. Ct. App. 2014).

⁶⁹ Missouri has also handled the issue of automatic carpet cleaning provisions, but has not definitively stated the provisions are unenforceable. *Yunker v. Inv. Realty, Inc.*, 461 S.W.3d 1 (Mo. Ct. App. 2015) (allowing a landlord and commercial tenant to agree to amounts or fees to be charged for carpet cleaning, but not beyond ordinary wear and tear); MO. ANN. STAT. § 535.300(2) (West through First Reg. Sess. of the 100th Gen. Assemb.) (permitting landlords and tenants to contract in a rental agreement for cleaning fees so long as the agreement includes “a provision notifying the tenant that he or she may be liable for actual costs for carpet cleaning that exceed ordinary wear and tear . . .”). Rather, Missouri has handled such provisions in terms of defining “ordinary wear and tear” and explaining that the freedom to contract is limited by statutory requirements, something parties cannot contract out of. *Yunker*, 461 S.W.3d at 7–10. Michigan has also judicially concluded that automatic carpet cleaning provisions that stand alone as separate fees, not withheld from a security deposit, are enforceable. *Stutelberg v. Practical Mgmt. Co.*, 245 N.W.2d 737, 741 (Mich. Ct. App. 1976).

⁷⁰ *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155 (Iowa 2016); *see also* *Caruso v. Apts. Downtown, Inc.*, 880 N.W.2d 465, 471 (Iowa 2016) (emphasizing “that a rental deposit is not designed to serve as an advance payment of amounts that will always be due under the lease.”); *Walton v. Gaffey*, 895 N.W.2d 422, 427–28 (Iowa 2017) (holding an automatic carpet cleaning provision unenforceable because it deducted the cost “from the security deposit without regard to whether the cleaning [was] necessary to restore the carpet to its condition at the commencement of the tenancy.”); *but see* *Kline v. SouthGate Prop. Mgmt., LLC*, 895 N.W.2d 429, 444 (Iowa 2017) (concluding that landlords cannot impose an automatic carpet cleaning fee and deduct it from a rental deposit, but landlords still may collect carpet cleaning costs due to tenant noncompliance, or when the condition of the carpet is beyond normal wear and tear).

1. Iowa

The Iowa Supreme Court in *De Stefano* analyzed the improper withholding of a tenant's security deposit.⁷¹ The tenant claimed that her landlord could not impose an automatic carpet cleaning fee taken from her rental deposit.⁷² The court concluded that "the problem with the carpet-cleaning provision is that it generates an automatic deduction from the rental deposit even when none of the conditions of section 562A.12(3) have been met."⁷³ So even where a tenant does not default on rent and has restored the dwelling unit to the same condition as at the commencement of the lease (or a condition that resembles ordinary wear and tear), the automatic carpet cleaning fee is still being taken from the rental deposit.⁷⁴ The court provided an example of such tenant compliance for clarity, stating that "for example, suppose a tenant had Mary Poppins and her magical 'Spoonful of Sugar' team restore the carpet to a pristine state at the end of the leasehold. Certainly, an additional carpet cleaning would not be necessary. Nonetheless, the charge would still apply."⁷⁵

The *De Stefano* court also found that automatic carpet cleaning provisions imposed by landlords needlessly take from tenants the return of the full rental deposit they deserve.⁷⁶ Tenants are more deserving of a full refund of rental deposits upon absolute compliance because the purpose of Iowa's rental deposit statute is to "ensure the tenant faithfully executes her or his duties under the lease agreement."⁷⁷ When the tenant has fully complied with his or her lease agreement and the law, the purpose of the rental deposit has been served.⁷⁸ Therefore, the court held that where a tenant has

⁷¹ *De Stefano*, 879 N.W.2d 155.

⁷² *Id.* at 158.

⁷³ *Id.* at 185 (noting that allowing the landlord to impose an automatic deduction reduces the burden on landlords by lessening what they must show in order to withhold a security deposit). Such a reduction contradicts the Legislature's intent in including the provision to ensure that tenants comply with the lease agreement, rather than allowing landlord profiteering. *Id.* at 183, 185–86 (explaining that legislative intent may be gleaned from omission as well as inclusion and that the purpose of the security deposit is to ensure the tenant complies with the rental agreement).

⁷⁴ *Id.*; see also IOWA CODE ANN. § 562A.12(3) (West through 2019 Reg. Sess.) (detailing the requirements for a landlord to properly withhold all or part of a rental deposit).

⁷⁵ *De Stefano*, 879 N.W.2d at 185.

⁷⁶ *Id.*

⁷⁷ *Id.* at 185–86 (emphasizing that a rental deposit is not designed to serve as an advance payment of amounts that will always be due under the lease because a rental deposit's sole purpose is to "ensure the tenant faithfully executes her or his duties under the lease agreement").

⁷⁸ See IOWA CODE ANN. § 562A.12 (West through 2019 Reg. Sess.); *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 183 (Iowa 2016) (rental deposits are meant as security for a tenant's performance of the rental agreement).

abided by the requirements detailed in section 562A.12, an automatic carpet cleaning fee taken from a rental deposit is not enforceable.⁷⁹

2. Ohio

Ohio courts also addressed the legality of automatic carpet cleaning provisions in lease agreements.⁸⁰ Ohio holds that it is “well settled that a provision in a lease agreement as to payment for carpet cleaning that is inconsistent with R.C. 5321.16(B) is unenforceable.”⁸¹ This means that when the landlord has not suffered damages, especially by way of ordinary wear and tear, he or she cannot withhold a security deposit.⁸² Additionally, in *Albreqt v. Chen* the court stated that “[i]n the absence of an affirmative showing, by way of itemization, that there was a specific need to clean the carpet, [the landlord]’s unilateral deduction was improper. A lease provision regarding carpet cleaning that is inconsistent with [the Ohio security deposit provision] is unenforceable.”⁸³

In *Albreqt*, the tenant brought an action against the landlord, seeking the return of his security deposit. Similar to *De Stefano*, Albreqt claimed, in part, that the landlord had improperly demanded an automatic carpet cleaning fee.⁸⁴ In its analysis, the *Albreqt* court relied on Ohio’s landlord-tenant statutes to explain that a landlord may only deduct from a security deposit for the following reasons: “(1) past due rent; (2) damages suffered by the landlord by reason of the tenant’s noncompliance with R.C. 5321.05; or (3) damages suffered by reason of the tenant’s noncompliance with the rental

⁷⁹ *De Stefano*, 879 N.W.2d at 185; see also *Kopp v. Assoc. Estates Realty Corp.*, No. 09AP-719, 2010 WL 1510196, at *5–6 (Ohio Ct. App. Apr. 15, 2010) (finding that nonrefundable pet and redecorating fees were not security deposits because they did not secure obligations of the parties, were not intended to be applied towards damages, and were not deducted from the deposit); *Gartz v. J & J Ass’n Holding, LLC*, No. 03-1978, 271 Wis.2d 820, 2004 WL 202876, at *5 (Wis. Ct. App. Feb. 4, 2004) (holding a carpet cleaning fee permissible under Wisconsin law because the cost was not deducted from the security deposit itself).

⁸⁰ *De Stefano*, 879 N.W.2d at 185 (recognizing Ohio case law and using it as guidance when determining that automatic carpet cleaning provisions are unenforceable when taken directly from security deposits. The court also looked at other states’ decisions in order to fully analyze the issue and produce the most logical and fair result).

⁸¹ *Chaney v. Breton Builder Co.*, 720 N.E.2d 941, 943 (Ohio Ct. App. 1998), abrogated in part on other grounds by *Parker v. I & F Insulation Co.*, 730 N.E.2d 972, 977–79 (Ohio 2000); OHIO REV. CODE ANN. § 5321.16 (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)).

⁸² *Chaney*, 720 N.E.2d at 943.

⁸³ *Albreqt v. Chen*, 477 N.E.2d 1150, 1153 (Ohio Ct. App. 1983) (internal citation omitted).

⁸⁴ *Id.*

agreement.”⁸⁵ When Albreqt “vacated the apartment, the carpet was just as clean as or cleaner than when [the tenant] initially moved into the apartment,” conclusively establishing that Albreqt abided by the requirements set by the lease and Ohio’s statutes.⁸⁶ Therefore, Albreqt was not responsible for the cost of carpet cleaning because the automatic provision was unenforceable.⁸⁷

3. *Indiana*

In contrast to Iowa and Ohio, Indiana holds that a landlord may require tenants to clean carpets upon termination or withhold money from a security deposit to pay for such cleaning.⁸⁸ Indiana has, however, limited such allowance. Only a landlord who suffers damages due to a tenant’s noncompliance with the lease agreement may charge the tenant for repairs out of the tenant’s security deposit.⁸⁹ The *Castillo-Cullather* court explained that the lease agreement required the tenant to steam-clean the carpets and return the apartment in a “good condition” upon termination of the lease.⁹⁰ The tenant conceded that she did not steam-clean the carpets, but claimed any damage constituted ordinary wear and tear, which would prohibit the landlord from deducting repair costs from the security deposit.⁹¹

The court disagreed, finding that the parties were free to contract when forming the lease and were free to contractually define ordinary wear and tear.⁹² The parties did so by agreeing to return the unit in good condition, and the court defined this condition as

⁸⁵ *Id.*; see also § 5321.16 (listing the reasons a landlord is permitted to withhold a security deposit).

⁸⁶ *Albreqt*, 477 N.E.2d at 1153.

⁸⁷ *Id.*; see also *Riding Club Apts. v. Sargent*, 440 N.E.2d 1368, 1369 (Ohio Ct. App. 1981) (stating that “[a] liquidated damages clause permitting the landlord to retain a security deposit without itemization of actual damages caused by reason of the tenant’s noncompliance with R.C. 5321.05 or the rental agreement is inconsistent with R.C. 5321.16(B), which requires itemization of damages after breach by the tenant of the rental agreement.”).

⁸⁸ See *Castillo-Cullather v. Pollack*, 685 N.E.2d 478, 483 (Ind. Ct. App. 1997) (holding that the tenant was required to steam-clean the carpets before leaving, and emphasizing that parties are able to contract freely, including defining further tenant obligations), *abrogated in part on other grounds by Mitchell v. Mitchell*, 695 N.E.2d 920, 923 (Ind. 1998).

⁸⁹ *Id.* at 482.

⁹⁰ *Id.* at 482–83 (looking at the landlord’s claims that the premises as a whole was not returned in “good condition” per the lease agreement). The court gave the phrase its ordinary definition and found that the premises had to be returned in a condition that was free from pollution or dirt. *Id.* at 484–85.

⁹¹ *Id.* at 482 (explaining that the statutes require tenant compliance with the rental agreement and because steam-cleaning the apartments was a provision in the lease, the landlord was entitled to damages stemming from noncompliance with that provision).

⁹² *Id.*

leaving the premises in a state that is free from dirt and grime.⁹³ The court further reasoned that it had “upheld lease agreements which have delegated cleaning and repair duties to tenants or defined what constitutes damages.”⁹⁴ Because the tenant did not steam-clean the carpets, and the parties agreed that the unit would be returned in “good condition” as defined by the landlord, the court concluded that the landlord suffered damages due to the tenant’s noncompliance.⁹⁵ The landlord was therefore entitled to deduct the extra cleaning costs from the tenant’s security deposit.⁹⁶

Landlords and tenants in Indiana are free to contract, which includes the freedom to define ordinary wear and tear within a specific lease agreement as determined by the *Castillo-Cullather* court.⁹⁷ If the landlord finds tenant noncompliance with their agreed-upon lease, the landlord is entitled to deduct damages from the tenant’s security deposit.⁹⁸ However, Indiana law is similar to Iowa and Ohio laws when a tenant abides by the lease agreement. When the tenant is fully compliant, such as returning an apartment in a good and steam-cleaned condition, the landlord may not deduct an automatic carpet cleaning fee, especially if the carpets are within an ordinary wear and tear condition.⁹⁹

4. Nebraska

Nebraska has not yet determined the legality of mandatory carpet cleaning provisions, but does have guidance set forth in

⁹³ *Id.* at 482–83 (analyzing the records the landlord kept regarding the condition the unit was left in. The landlord mentioned that there was dust, “splat” in the kitchen, and the appliances were unsanitary, which prompted the court to conclude that the tenant did not comply with the rental agreement).

⁹⁴ *Id.* at 483.

⁹⁵ *Id.*

⁹⁶ *Id.* at 483–84.

⁹⁷ *Id.* (explaining that landlords may define the condition the unit must be returned in, such as in a “good condition” that requires tenants to return the premises in a condition free of dirt, grime, and damage). However, the court did not conclusively establish that automatic provisions are enforceable because the landlord was still required to show that the tenant did not comply with the lease agreement. *Id.*

⁹⁸ *Id.* at 482–83. Landlords’ burden of proving damages from noncompliance with the lease agreement or the law is still required despite the ability to freely contract and define the terms of the lease. *Id.*; see also IND. CODE ANN. § 32-31-3-14 (West through First Reg. Sess. of the 121st Gen. Assemb.) (requiring landlords to provide an itemized list of damages stemming from tenant noncompliance with the rental agreement or the law as provided in the surrounding statutes).

⁹⁹ *Castillo-Cullather*, 685 N.E.2d at 482–83 (concluding that when the parties do not define the terms of the lease agreement, the agreement will be given its ordinary meaning and the condition of ordinary wear and tear will normally be applied), *abrogated in part on other grounds by* Mitchell v. Mitchell, 695 N.E.2d 920, 922 (Ind. 1998).

Mason v. Schumacher.¹⁰⁰ Similar to Iowa and Ohio, which require a landlord to provide an itemized list of damages suffered, Nebraska holds that the party “claiming damages must show entitlement to the damages” when an action is brought.¹⁰¹ *Mason* involved a tenant claiming the wrongful withholding of his security deposit for cleaning fees, among other things.¹⁰²

The *Mason* court concluded that “[a] tenant is obligated to return the premises to the landlord in as clean condition, excepting ordinary wear and tear, as when the tenancy commenced.”¹⁰³ But the landlord claiming damages must prove that the tenant did not comply with the rental agreement or that the condition was beyond ordinary wear and tear.¹⁰⁴ The tenant in *Mason* had left the premises unclean, and abandoned the premises in violation of his lease agreement.¹⁰⁵ Ultimately, the full amount of damages claimed by the landlords were not proven, so only the established damages could be recovered from the tenant.¹⁰⁶

Nebraska’s landlord-tenant statutes mirror this requirement by mandating that a landlord provide a written itemization for a fully or partially withheld security deposit.¹⁰⁷ Despite Nebraska’s lack of judicial action on the precise issue of automatic carpet cleaning clauses, its early decisions in this area are similar to Iowa’s *De*

¹⁰⁰ *Mason v. Schumacher*, 231 Neb. 929, 439 N.W.2d 61 (1989).

¹⁰¹ *Id.* at 942, 439 N.W.2d 70; *see also* NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)) (stating that a landlord must provide the balance and a written itemization to the tenant when withholding security deposits).

¹⁰² *Mason*, 231 Neb. at 929, 439 N.W.2d at 63. The tenant abandoned the premises, which was contrary to his lease agreement and entitled the landlord to those damages that could be proven. *Id.* The damages included the cost of removing the items left behind and any cleanup costs associated with the premises’ condition that was beyond ordinary wear and tear. *Id.*

¹⁰³ *Id.* at 943, 439 N.W.2d at 70 (internal quotation omitted). The court strictly utilized the statutory language of the tenant’s obligations when occupying a premises, which favors the conclusion of Nebraska courts that automatic carpet cleaning provisions are unenforceable because the statutes’ language will be applied as written. *See* NEB. REV. STAT. § 76-1421 (Reissue 2018).

¹⁰⁴ *Mason*, 231 Neb. at 929, 439 N.W.2d at 63.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* Damages resulting from abandoning the premises before the lease term ended violated the lease agreement and entitled the landlords to damages. *Id.* The landlords also proved damages by cleaning up after the tenant due to belongings left behind and portions of the premises left in an entirely unclean condition. *Id.*

¹⁰⁷ NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)). The requirement favors the unenforceability of automatic carpet cleaning provisions because such provisions reduce and ultimately remove the burden on the landlord of proving damages through a written itemization that justifies the money withheld from a tenant’s security deposit. *Id.*

Stefano case.¹⁰⁸ Consequently, it is likely that Nebraska will follow Iowa and Ohio’s stance—that automatic carpet cleaning provisions are unenforceable.

III. ANALYSIS

A. Unenforceability Due to Controlling and Persuasive Precedent

As explained above, Nebraska courts have yet to consider the legality of automatic carpet cleaning provisions. With the lack of relevant case law, Nebraska courts will likely look to other state court decisions and its own case law as guidance if presented with the issue directly. Nebraska has a history of following other states, like Iowa, in the Eighth Circuit, which, as explained above, has helpful case law regarding automatic carpet cleaning clauses.¹⁰⁹ The Nebraska Supreme Court positively cited Iowa case law five times in its opinions from 2017–2018 and used these cases as guidance for the proper stance to take.¹¹⁰ Nebraska courts being presented with the issue of automatic carpet cleaning fees will likely follow Iowa and other Eighth Circuit courts again, but it will also consider its own case law when doing so.¹¹¹

While Nebraska may initially be influenced by Iowa due to its close proximity and inclusion in the Eighth Circuit, Nebraska courts will likely follow Iowa because it is among the few states in the Midwest that has repeatedly handled and taken a definitive stance

¹⁰⁸ *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 186 (Iowa 2016) (requiring the landlord to provide a statement specifying “the nature of the damages”). The landlord could then withhold only those amounts necessary to restore the unit to its prior condition. *Id.* However, if a landlord cannot prove the damages that he or she claims (e.g., tenant noncompliance with the rental agreement or the law), then the landlord is not entitled to automatically withhold the security deposit. *Id.* This stance is very similar to Nebraska’s, because the *Mason* court limited the recovery of damages by the landlord where the landlord was unable to prove the full amount claimed. *Mason*, 231 Neb. at 929, 439 N.W.2d at 63.

¹⁰⁹ *See, e.g.*, Stefanie S. Pearlman, *Persuasive Authority and the Nebraska Supreme Court: Are Certain Jurisdictions or Secondary Resources More Persuasive Than Others?*, NEB. LAW., Mar. 2018, at 33; *see also* Omaha Constr. Indus. Pension Plan v. Children’s Hosp., 11 Neb. App. 35, 41, 642 N.W.2d 849, 854 (2002) (using Iowa case law to support the proposition that employees have earned the right for their trusts to make claims for unpaid sums by subcontractors).

¹¹⁰ Pearlman, *supra* note 110. It must be noted that Nebraska has cited Florida many times as well, making it the exception to Nebraska courts’ trend in citing to neighboring states. *Id.* However, Nebraska courts will generally stick to states with similar views in a similar region, which happens to be those states in the Eighth Circuit or those closest to them geographically. *Id.*

¹¹¹ *Id.* at 34.

against automatic carpet cleaning provisions.¹¹² The likelihood of Nebraska relying on Iowa for guidance is increased by the fact that Nebraska’s case law also closely resembles already-established Iowa decisions.

For example, Nebraska shows numerous similarities with Iowa case law in its most relevant case, *Mason v. Schumacher*, which examines “liquidated and actual damages for unlawful ouster and wrongful withholding of [a] security deposit.”¹¹³ As previously mentioned, the court found that the tenant was only “obligated to return the premises to the landlord in as clean condition, excepting ordinary wear and tear, as when the tenancy commenced.”¹¹⁴ In numerous decisions, Iowa courts have held similarly, finding that where a tenant has not met any of the conditions set out in section 562A.12(3) of the Iowa Code, a security deposit must be returned.¹¹⁵ Among the conditions to be met in the statute are the costs to “restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.”¹¹⁶

Both Nebraska and Iowa courts agree that landlords are permitted to withhold all or a portion of a security deposit for purposes of restoration due to noncompliance by the tenant with the lease agreement or law. Both also agree that when the condition of the dwelling unit shows only ordinary wear and tear, none of the security deposit can be withheld.¹¹⁷ Nebraska’s agreement with

¹¹² See *Walton v. Gaffey*, 895 N.W.2d 422, 427–28 (Iowa 2017); *Caruso v. Apts. Downtown, Inc.*, 880 N.W.2d 465, 471 (Iowa 2016) (emphasizing that “a rental deposit is not designed to serve as an advance payment of amounts that will always be due under the lease”); *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155 (Iowa 2016).

¹¹³ *Mason v. Schumacher*, 231 Neb. 929, 930, 439 N.W.2d 61, 63 (1989); see also *Black v. Brooks*, 285 Neb. 440, 446, 827 N.W.2d 256, 261 (2013) (holding that a landlord needed to established “that she incurred damages in excess of wear and tear . . .”).

¹¹⁴ *Mason*, 231 Neb. at 943, 439 N.W.2d at 70 (internal quotation omitted). This holding uses the language of Nebraska’s landlord-tenant statutes, showing its strict following of the statutory provisions that have arisen with the case. See NEB. REV. STAT. § 76-1421 (Reissue 2018).

¹¹⁵ See generally *Kline v. SouthGate Prop. Mgmt., LLC*, 895 N.W.2d 429, 443–44 (Iowa 2017); *Walton*, 895 N.W.2d at 427–28; *Caruso*, 880 N.W.2d at 471; *De Stefano*, 879 N.W.2d at 185.

¹¹⁶ IOWA CODE ANN. § 562A.12(2) (West through 2019 Reg. Sess.).

¹¹⁷ Compare *Mason*, 231 Neb. at 943, 439 N.W.2d at 70 (explaining that the landlords could not withhold the full \$248 in cleanup costs because they could not prove the claimed damages, especially because a portion of the claimed damages stemmed from ordinary wear and tear. Instead, they were entitled to the proven \$175.45 in cleanup costs and \$395 in delinquent rent), with *De Stefano*, 879 N.W.2d at 185 (discussing the importance of a security deposit because it ensures performance by the tenant of the lease obligations. But, where the tenant has abided by the agreement at termination, the landlord is not justified in taking the automatic carpet cleaning deduction from the security deposit, especially if the damages are from ordinary wear and tear or if there are no damages at all.).

Iowa that tenants have complied with the law when they return the premises with only ordinary wear and tear suggests that the courts may also prohibit automatic carpet cleaning provisions.¹¹⁸ Therefore, Nebraska's general agreement with Iowa lends support to the conclusion that Nebraska will follow Iowa's guidance.

Nebraska may also look to Ohio for further guidance if presented with the issue of automatic carpet cleaning provisions. Ohio's case law closely resembles Iowa's, thus providing Nebraska courts with additional support when presented with the issue.¹¹⁹ Recall that in Ohio's key case, *Albreqt v. Chen*, the court held that because the tenant abided by the lease agreement and the relevant statute, which excepts ordinary wear and tear, the tenant was entitled to the full return of his security deposit.¹²⁰ The court also noted that the carpet was returned in a condition that was just as clean, if not cleaner, at termination of the tenancy.¹²¹ This finding justified the need for the security deposit's return and highlighted the injustice brought by automatic carpet cleaning clauses.¹²²

Nebraska's *Mason* case and relevant statutes hint at a similar finding of the provisions' injustice. Similar to Ohio's *Albreqt*, Nebraska requires tenant compliance with the lease agreement and relevant landlord-tenant statutes.¹²³ The landlord must also statutorily provide an itemization of the damages to prove the tenant's noncompliance.¹²⁴ Ultimately, this requires landlords to prove they are properly withholding security deposits in order to restore carpets to their prior condition.¹²⁵ Automatically withholding a security deposit despite full compliance by the tenant, especially if the tenant returns the carpet in a condition of ordinary

¹¹⁸ *Mason*, 231 Neb. at 943, 439 N.W.2d at 70; *see also* Black, 285 Neb. at 446, 827 N.W.2d at 261 (requiring the landlord to prove damages in excess of normal wear and tear in order to recover the claimed damages).

¹¹⁹ *Compare De Stefano*, 879 N.W.2d at 155, *with Albreqt v. Chen*, 477 N.E.2d 1150 (Ohio Ct. App. 1983).

¹²⁰ *Albreqt*, 477 N.E.2d at 1154 (finding that the landlord could not prove the tenant's noncompliance with the lease agreement or statute, thus prompting the court to conclude the tenant was entitled to the return of his security deposit).

¹²¹ *Id.* at 1153. Automatic carpet cleaning provisions taken from security deposits further penalize a tenant despite compliance with the rental agreement, and especially when the tenant returns the dwelling unit in a far better condition than when the tenancy commenced. *Id.*; *De Stefano*, 879 N.W.2d at 185 (providing the example of a tenant leaving the apartment in a much better condition at the end of the lease term, which negated the need for an additional carpet cleaning that would be automatically taken anyway).

¹²² *Albreqt*, 477 N.E.2d at 1154.

¹²³ NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)); *Mason*, 231 Neb. at 943, 439 N.W.2d at 70.

¹²⁴ § 76-1416.

¹²⁵ *See Mason*, 231 Neb. at 942, 439 N.W.2d at 70 (1989); *Albreqt*, 477 N.E.2d at 1153.

wear and tear or cleaner, is improper because it disregards the tenant's compliance and frustrates the purpose of security deposits.¹²⁶

In Ohio, the explicit purpose of a security deposit is to ensure performance of the lease agreement.¹²⁷ If the landlord cannot prove actual damages or noncompliance in accordance with the statute, then the security deposit must be returned, lest its purpose be thwarted.¹²⁸ While Nebraska's statute does not explicitly define security deposit, it is likely Nebraska courts will agree that security deposits are only held as security for the tenant's compliance with the rental agreement because the statute refers to it as security.¹²⁹ In an effort to uphold the purpose of a security deposit, Nebraska should abide by its precedent in *Mason* and follow the lead of neighboring states with similar approaches to security deposits. More generally, a Nebraska court will probably use both Iowa and Ohio as guidance when presented with the issue of automatic carpet cleaning provisions, and similarly find that they are unenforceable.

Lastly, Nebraska will likely examine Indiana case law surrounding automatic carpet cleaning clauses. While Indiana has allowed automatic carpet cleaning provisions to be enforceable, such clauses are only enforceable where the landlord has suffered damages due to tenant noncompliance.¹³⁰ Indiana supports allowing parties to freely contract, including recognizing their right to define

¹²⁶ *Albrecht*, 477 N.E.2d at 1154. Recall that the purpose of a security deposit is to provide security for landlords for the tenant's performance of the lease agreement. See IOWA CODE ANN. § 562A.6(12) (West through 2019 Reg. Sess.); IND. CODE ANN. § 32-31-3-9 (West through First Reg. Sess. of the 121st Gen. Assemb.); OHIO REV. CODE ANN. § 5321.01(E) (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)); NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)). When tenants are automatically charged for carpet cleanings taken from the security deposit, despite full compliance with the rental agreement and the law, tenants are being unjustifiably punished. See generally Geurts, *supra* note 29 (stating that generally provisions that permit the withholding of security deposits “were not upheld if they appeared to impose a penalty”).

¹²⁷ See § 5321.01(E) (defining a “security deposit” as a “deposit of money or property to secure performance by the tenant under a rental agreement”).

¹²⁸ See OHIO REV. CODE ANN. § 5321.16(B) (West through Files 1 to 14 of the 133rd Gen. Assemb. (2019–2020)).

¹²⁹ See NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)) (stating that landlords may receive “security” in the form of a security deposit). Referring to the security deposit as “security” supports a finding that the deposit is only meant to serve to ensure the tenant will faithfully execute the rental agreement, which is similar to other views regarding similar statutes. See § 562A.6; § 32-31-3-9; § 5321.01(E).

¹³⁰ See *Castillo-Cullather v. Pollack*, 685 N.E.2d 478 (Ind. Ct. App. 1997), *abrogated in part on other grounds by Mitchell v. Mitchell*, 695 N.E.2d 920, 922 (Ind. 1998).

the condition that premises must be returned in.¹³¹ If the landlord and tenant agree to certain cleaning provisions and the condition the premises must be returned in before termination of the lease, an automatic carpet cleaning provision is enforceable.¹³² Therefore, in Indiana a tenant may be noncompliant when he or she fails to steam-clean carpets pursuant to an agreed-upon lease provision.¹³³ This noncompliance with the lease agreement justifies the landlord's withholding of the security deposit.¹³⁴

At first glance it may seem that Nebraska could follow Indiana's guidance given Nebraska's support of the freedom to contract. When faced with the question directly though, it is unlikely Nebraska will follow Indiana's precedent in this context, because Nebraska's landlord-tenant statutes forbid such agreements in a lease. As stated above, Indiana fully supports the freedom to contract.¹³⁵ Similarly, Nebraska requires that each party must abide by the provisions that the parties bargained for and agreed to.¹³⁶ However, the ability to contract out of ordinary wear and tear is something Nebraska case law does not support.¹³⁷ Nebraska's statute also explicitly excepts ordinary wear and tear from a tenant's obligations.¹³⁸ Thus, it is unlikely that landlords could require tenants to return a dwelling unit in perfect condition, even if the parties purported to agree to as much in the lease.¹³⁹ While Nebraska may agree with Indiana's approach insofar as it requires tenants to

¹³¹ *Id.* at 483. Indiana courts have been contradictory in determining whether ordinary wear and tear is always permissible or whether landlords can contract differently. *Compare* *Kishpaugh v. Odegard*, 17 N.E.3d 363, 377 (Ind. Ct. App. 2014) (stating that “the Tenant Statute certainly excludes ‘ordinary wear and tear’ from the gamut of a tenant’s potential liability . . .”), *with* *Castillo-Cullather*, 685 N.E.2d at 478 (permitting landlords to contract for a particular condition that the premises must be returned in). It is likely that both may be read in conjunction to allow an alternative condition when the parties contract for such a condition (e.g., when the parties contract for “good condition” upon return), but otherwise the standard of ordinary wear and tear will apply, thus allowing tenants to return the dwelling unit in such condition. *Kishpaugh*, 17 N.E.3d at 377.

¹³² *Castillo-Cullather*, 685 N.E.2d at 485.

¹³³ *Id.* at 481.

¹³⁴ *Id.* (landlords must set out a specific condition the dwelling unit must be returned in or other various actions to be taken before returning the premises in the lease agreement). These specific clauses and conditions allow the landlord to prove that the parties freely contracted and that the tenant is in noncompliance with the agreed-upon lease agreement. *Id.*

¹³⁵ *Id.* at 483. Recall that the landlord required the premises to be returned in “good condition” and with steam-cleaned carpets by the tenant. *Id.*

¹³⁶ NEB. REV. STAT. § 76-1414(1) (Reissue 2018) (allowing landlords to create terms in their rental agreements so long as they do not contain prohibited terms per Nebraska's landlord-tenant statutes).

¹³⁷ *See* *Mason v. Schumacher*, 231 Neb. 929, 942–43, 439 N.W.2d 61, 70–71 (1989).

¹³⁸ NEB. REV. STAT. § 76-1421(2) (Reissue 2018).

¹³⁹ *See* *Mason*, 231 Neb. at 942–43, 439 N.W.2d at 70–71.

comply with the lease, it should nevertheless conclude that automatic carpet cleaning provisions, absent proven damages beyond ordinary wear and tear, are unenforceable.¹⁴⁰

B. Unenforceability through Interpretation of Nebraska’s Statutes

Under the relevant Nebraska landlord-tenant act statutes, automatic carpet cleaning provisions should be unenforceable due to the plain language of the statutes. Nebraska courts analyzing the issue of automatic carpet cleaning clauses must first examine the plain language of the relevant landlord-tenant statutes in order to determine what the Legislature intended.¹⁴¹ This examination is likely to lead Nebraska courts to hold automatic carpet cleaning clauses unenforceable.

The plain and ordinary meaning of Nebraska’s security deposit and tenant obligations statutes likely require landlords to prove noncompliance and damages rather than allow automatic carpet cleaning clauses. Recall that Nebraska sets out specific requirements for security deposits.¹⁴² Landlords may only withhold a security deposit in order to apply it “to the payment of rent and the amount of damages which the landlord has suffered by reason of the tenant’s noncompliance with the rental agreement or section 76-1421.”¹⁴³

Section 76-1421 requires the tenant to maintain the dwelling unit and to return the dwelling unit in “clean condition, excepting ordinary wear and tear, as when the tenancy commenced.”¹⁴⁴ If the landlord demands payment through the security deposit, “the balance, if any, and a written itemization shall be delivered or mailed to the tenant within fourteen days after the date of termination of the

¹⁴⁰ See *Mason*, 231 Neb. at 943, 439 N.W.2d at 70. Additionally, the Legislature would not have included such language if their intent was to allow landlords to contract out of it. See also NEB. REV. STAT. §§ 76-1421(2), 76-1422 (Reissue 2018) (allowing landlords to create their own provisions so long as they adopt valid rules and regulations set out by the statutes); Harmel, *supra* note 3, at 447 (explaining that Texas courts should “follow the Ohio Courts’ reasoning and find the [automatic carpet cleaning] fee only acceptable when the damage is beyond normal wear and tear”).

¹⁴¹ *ML Manager, LLC v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566, 572 (2014); *Doty v. West Gate Bank, Inc.*, 292 Neb. 787, 793–94, 874 N.W.2d 839, 844 (2016) (stating, “[i]n discerning the meaning of a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense . . .”). The Legislature’s intent may be gleaned from many sources, but the courts will look primarily to the language that the Legislature chose, because that language often provides a clear expression of the Legislature’s intent. *Jensen*, 287 Neb. at 177, 842 N.W.2d at 572.

¹⁴² NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)).

¹⁴³ *Id.*

¹⁴⁴ § 76-1421.

tenancy.”¹⁴⁵ Ambiguity arguably arises with the meaning of ordinary wear and tear and whether landlords can contract out of it, thus prohibiting the tenant from returning a dwelling unit in such condition.¹⁴⁶ Ambiguity may also arise with the meaning of “noncompliance” with rental agreements, and if automatic carpet cleaning provisions are enforceable if explicitly agreed to in rental agreements.¹⁴⁷ Thus, courts are likely to have to conduct some form of statutory interpretation to resolve these issues.¹⁴⁸ Nebraska courts generally begin by giving statutory language its plain and ordinary meaning.¹⁴⁹ The courts must also give effect to the entire language of a statute and reconcile any inconsistencies in the different provisions, making them sensible and harmonious.¹⁵⁰

Nebraska courts should first look to the landlord’s obligations under section 76-1416, because that statute leads to other relevant provisions that may have an impact on the proceedings.¹⁵¹ The statute, as recently amended, clearly states that the landlord may only recognize damages from the tenant’s noncompliance with the rental agreement or section 76-1421, and must also provide an itemization of damages that justifies the money withheld from security deposits.¹⁵² This should lead the courts to next determine what the statutes mean by “the rental agreement” and “section 76-1421.”¹⁵³

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* This ambiguity is represented in the cases previously discussed, because each discuss landlords’ burden to prove damages stemming from noncompliance, but automatic carpet cleaning provisions often eliminate that requirement. This leaves courts to determine whether such provisions are enforceable under the statutes. *See* Castillo-Cullather v. Pollack, 685 N.E.2d 478 (Ind. Ct. App. 1997), *abrogated in part on other grounds by* Mitchell v. Mitchell, 695 N.E.2d 920, 922 (Ind. 1998); De Stefano v. Apts. Downtown, Inc., 879 N.W.2d 155, 186 (Iowa 2016); Mason v. Schumacher, 231 Neb. 929, 942–43, 439 N.W.2d 61, 70–71 (1989) (analyzing the landlord’s claim for damages and whether the landlord was entitled to the full amount per the statutory language that requires landlords to prove damages).

¹⁴⁷ § 76-1416.

¹⁴⁸ *See, e.g.,* Dean v. State, 288 Neb. 530, 537, 849 N.W.2d 138, 146 (2014) (finding ambiguity with the meaning of the phrase “false statement”). Ambiguity may arise when opposing parties both claim a statute favors their case, requiring courts to interpret the statute as a whole in order to glean the true meaning behind it. *Id.*

¹⁴⁹ ML Manager, LLC v. Jensen, 287 Neb. 171, 177, 842 N.W.2d 566, 572 (2014).

¹⁵⁰ *Id.*

¹⁵¹ *Id.* (emphasizing that the statutory language be looked at as a whole). Starting with the security deposit statute is important because it leads the court to other provisions, such as the condition that the tenant is obligated to return the premises in and the burden of proof, by way of itemization, that is established for the landlord. *See* NEB. REV. STAT. §§ 76-1416, 76-1421 (Reissue 2018).

¹⁵² § 76-1416.

¹⁵³ *See* Castillo-Cullather v. Pollack, 685 N.E.2d 478, 482–83 (Ind. Ct. App. 1997), *abrogated in part on other grounds by* Mitchell v. Mitchell, 695 N.E.2d

Nebraska Revised Statutes section 76-1410 already defines “rental agreement” to mean “all agreements, written or oral, between a landlord and tenant, and valid rules and regulations adopted under section 76-1422 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.”¹⁵⁴ Nebraska courts will then likely turn to section 76-1422 in an effort to look at the statute as a whole per statutory interpretation doctrine.¹⁵⁵ Section 76-1422 states that enforceable rules or regulations promote “the appearance, convenience, safety, or welfare of the tenants in the premises, [or] preserve the landlord’s property from abusive use”¹⁵⁶ The plain and ordinary meaning of this statute likely permits landlords to form a rental agreement with provisions that maintain the appearance of the dwelling unit and safeguard it from harsh or insulting use by the tenant, but this likely does not include protecting it from ordinary wear and tear.¹⁵⁷

Next, Nebraska courts should attempt to explain properly withheld security deposits by looking to section 76-1421. Recall that this section sets tenant obligations to maintain the dwelling unit, but excepts for ordinary wear and tear.¹⁵⁸ Courts will thus likely seek to define ordinary wear and tear.¹⁵⁹ The term “ordinary” will likely be given its basic dictionary definition as stated earlier, which means “routine” or “usual.”¹⁶⁰ Therefore, the tenant is permitted under

920, 922 (Ind. 1998). Courts will also have to define “ordinary wear and tear” to determine whether the Legislature intended for it to be capable of contractual removal, or whether that condition must be accepted by landlords. *See, e.g., id.* (determining that landlords may dictate the condition the premises must be returned in); *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 184–85 (Iowa 2016) (finding that landlords may withhold security deposits for the listed reasons in the statute, and that landlords may not automatically deduct for ordinary wear and tear).

¹⁵⁴ NEB. REV. STAT. § 76-1410(11) (Reissue 2018).

¹⁵⁵ *Jensen*, 287 Neb. at 177, 842 N.W.2d at 572 (explaining that statutory language should be construed as a whole).

¹⁵⁶ NEB. REV. STAT. § 76-1422 (Reissue 2018).

¹⁵⁷ *Abusive*, MERRIAM-WEBSTER DICTIONARY (New Edition 2016).

¹⁵⁸ NEB. REV. STAT. § 76-1421 (Reissue 2018) (requiring the tenant to keep the dwelling unit in clean and safe condition but allowing the tenant to return the unit in a state of ordinary wear and tear).

¹⁵⁹ Indiana has a very similar system of statutory interpretation and Nebraska’s analysis of ordinary wear and tear will likely resemble the steps Indiana courts have taken. *See Kishpaugh v. Odegard*, 17 N.E.3d 363, 377 (Ind. Ct. App. 2014). Indiana’s system is similar because it requires looking at legislative intent and glean the plain and ordinary meaning of the statutory text from the statutes as a whole. *Id. Kishpaugh* held that ordinary wear and tear meant returning the premises in a condition that represented routine or usual use. *Id.* While Nebraska courts will likely not reach the same ultimate conclusion as Indiana on automatic carpet cleaning provisions, the courts will likely set up a similar analysis when providing its own definition of ordinary wear and tear. *See id.*

¹⁶⁰ *Id.*

section 76-1421 to return the dwelling unit in a condition that shows routine use, or use of a usual fashion.¹⁶¹

Nebraska courts must also give effect to the legislative intent.¹⁶² Legislative intent may be gleaned from “the subject matter of the whole act, as well as the particular topic of the statute containing the questioned language.”¹⁶³ However, the court must place upon a statute a “reasonable construction which best achieves the statute’s purpose, rather than a construction which would defeat that purpose.”¹⁶⁴

While it may be argued that landlords can permissibly form rental agreements with automatic carpet cleaning provisions per section 76-1422 to promote the appearance or welfare of the dwelling unit for the tenants, such an allowance would disregard apparent legislative intent.¹⁶⁵ Nebraska courts, if possible, “give effect to every word, clause, and sentence of a statute, since the Legislature is presumed to have intended every provision of a statute to have a meaning.”¹⁶⁶ The Legislature explicitly excepted ordinary wear and tear from damages that could be withheld from a security deposit.¹⁶⁷ So, Nebraska courts will likely conclude that the Legislature would not have been so explicit if landlords could contractually require the tenant to return the premises in the exact condition the unit was assumed under.¹⁶⁸

Automatic carpet cleaning provisions also reduce the statutory burden on landlords of proving damages to withhold a security deposit, which goes against the explicit duties set forth in the

¹⁶¹ *Id.*

¹⁶² *ML Manager, LLC v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566, 572 (2014). Legislative intent is an important factor in statutory interpretation, as the courts do not want to go against the purpose behind enacting the statute. *Id.*

¹⁶³ *E.g.*, *City of Gordon v. Ruse*, 268 Neb. 686, 690, 687 N.W.2d 182, 185 (2004).

¹⁶⁴ *Id.* It is important to find harmony amongst all the statutes, but also to uphold the Legislature’s purpose in enacting the statute. *Id.*

¹⁶⁵ *Compare* NEB. REV. STAT. § 76-1422 (Reissue 2018), *with* NEB. REV. STAT. § 76-1421 (Reissue 2018).

¹⁶⁶ *E.g.*, *Sorensen v. Meyer*, 220 Neb. 457, 465, 370 N.W.2d 173, 179 (1985) (explaining that because the Legislature included certain words, sentences, and phrases, those words must be considered in their plain and ordinary meaning); *see also* *Iske v. Papio Nat. Ress. Dist.*, 218 Neb. 39, 41, 352 N.W.2d 172, 174 (1984) (giving effect “to each sentence and phrase, where no contrary intention appears”).

¹⁶⁷ § 76-1421. Had the Legislature intended for the parties to define the condition the tenant must return the premises in, it likely would not have included such explicit language permitting tenants to return the dwelling unit in a state of ordinary wear and tear. *Sorensen*, 220 Neb. at 465, 370 N.W.2d at 179 (stating that when the Legislature explicitly includes a sentence or phrase, those words should be given effect).

¹⁶⁸ Section 76-1422 provides no language supporting or permitting landlords from contracting out of ordinary wear and tear. Therefore, section 76-1421’s allowance of a tenant to return a dwelling unit in ordinary wear and tear condition must be enforced.

landlord-tenant statutes.¹⁶⁹ Nebraska courts will therefore hold that those landlords that can prove their damages beyond ordinary wear and tear, and can provide an itemization of such costs to fix the damages, may charge carpet cleaning fees. But Nebraska courts will likely find that landlords cannot claim damages, and thus itemize carpet cleaning fees, if the tenant returns the unit in an ordinary wear and tear condition, due to explicit statutory exceptions.¹⁷⁰ Therefore, when Nebraska courts apply the plain meaning to the relevant statutes, they will almost certainly find that automatic carpet cleaning clauses are unenforceable so long as the tenant returns his or her dwelling unit in ordinary wear and tear condition.

IV. CONCLUSION

Nebraska's case law on security deposits is sparse, leaving its security deposit statute relatively untouched, and ripe for interpretation. Nebraska should follow the lead of Iowa and Ohio courts to find that such provisions are unenforceable because they reduce the landlord's burden of providing an itemization of damages that justifies the money withheld. And, while freedom of contract should generally be supported, as seen in Indiana, landlords should not be able to contractually demand that tenants return a dwelling unit in the same or better condition as when they took possession.

Nebraska's landlord-tenant statutes should ultimately be interpreted to bar automatic carpet cleaning provisions. The courts should point to the plain language of the statutes, which permit tenants to return a dwelling unit in a condition of ordinary wear and tear. Courts should also emphasize the statutory requirement that landlords prove damages stemming from noncompliance with the rental agreement or the law in order to properly withhold security deposits. To uphold the plain meaning of the statutes and the Legislature's intent, Nebraska courts should conclude that automatic carpet cleaning provisions are unenforceable when presented with the issue.

¹⁶⁹ NEB. REV. STAT. § 76-1416 (Reissue 2018 & Supp. pending) (recently amended by Legis. B. 433, 106th Leg. 2019 Sess. (Neb. 2019)); *see also* De Stefano v. Apts. Downtown Inc., 879 N.W.2d 155, 185 (Iowa 2016) (concluding that automatic carpet cleaning provisions take away the itemization burden).

¹⁷⁰ The Nebraska statutes do not name a situation in which noncompliance may be found where a tenant returns a dwelling unit in a normal wear and tear condition.