

IN THE SUPREME COURT OF IOWA

HIGHGATE IRONWOOD, L.P.,

Plaintiff-Appellant,

v.

JAMSINE GANT and PARTIES IN
POSSESSION,

Defendants-Appellees.

No. 25-_____

Polk County Case No. SCSC740212

**APPLICATION FOR DISCRETIONARY REVIEW
BY PLAINTIFF-APPELLANT HIGHGATE IRONWOOD, L.P.**

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PRELIMINARY STATEMENT

Plaintiff-Appellant, Highgate Ironwood, L.P. (“Highgate”), hereby requests discretionary review of the April 3, 2025 ruling by the Iowa District Court for Polk County (the “District Court”), affirming the small claims division’s (the “Small Claims Court”) dismissal of landlord, Highgate’s, petition for forcible entry and detainer (“FED Action”) against tenant, Jasmine Gant, and Parties in Possession (jointly, “Gant”). *See* Iowa Code § 631.16 and Iowa R. App. P. 6.106. As described herein, the District Court erred in ruling that Highgate’s 3-day notice for nonpayment of rent was deficient and in applying Iowa’s peaceable possession statute, Iowa Code section 648.18, to Highgate’s FED Action for holdover tenancy. The challenged orders are attached as Exhibits A (District Court Order) and B (Small Claims Court Order). *See* Iowa R. App. P. 6.1002(1)(c).

Importantly, the Small Claims Court’s dismissal and District Court’s affirmance are contrary to two Court of Appeals’ decisions directly on point—the first decision, *AHEPA 192-1 Apartments v. Smith*, 810 N.W.2d 25 (Table), No. 11-0167, 2011 WL 6669744, at *6–7 (Iowa Ct. App. Dec. 21, 2011), was decided in 2011 and the most recent decision, written by the Honorable Justice Christopher McDonald, *Des Moines RHF Housing, Inc. v. Spencer*, 919 N.W.2d 768 (Table), No. 17-1465, 2018 WL 3057604, at *1 (Iowa Ct. App. June 20, 2018), was issued in 2018. In addition, the dismissal in this case is directly contrary to recent rulings made

by other judicial magistrates hearing FED actions in the same county—Polk County—on the same issue. As described below, for decades, landlords across the state, including Highgate, have had to grapple with how to proceed with FED actions in light of the inconsistent rulings issued in FED actions by the various small claims courts and district courts across the state. Precedents need to be followed—both by this Small Claims Court and other small claims courts in Iowa who are not following those precedents. As such, Highgate respectfully requests that the Iowa Supreme Court grant this Application for Discretionary Review and provide Highgate, as well as landlords and tenants across the state, definitive Supreme Court guidance on this unnecessarily recurring issue that landlords and tenants are faced with every single month.

STATEMENT OF THE CASE

On February 25, 2025, Highgate filed its FED Action against Gant for failing to vacate the leased premises located at 2304 Ironwood Dr., Unit 302, in Altoona, Iowa (the “Property”) following termination of Gant’s lease for nonpayment of rent. *See* D0001.

By way of background, in January of 2025 and February of 2025, Gant failed to pay her monthly rent as set forth in her lease agreement with Highgate. *See* D0001 (Petition for FED); D0003 (Notice of Nonpayment). On February 14, 2025, Highgate served Gant the required three-day notice of nonpayment of rent and notice

to quit (“Notice of Nonpayment”), showing a total unpaid rent balance of \$2319.36, which represented the unpaid rent for January and February 2025. *See* D0003. The notice advised Gant:

You must pay [Highgate] the above-noted rental amount within three (3) days from the service of this Notice, or otherwise, your Rental Agreement for the lease of the Property will terminate at that time. If you remain in possession of the Property on or subsequent to the termination date, [Highgate] may enforce the termination by instituting legal action against you and each of you as holdover pursuant to Iowa Code Section 562A.34(4).

See D0003. Gant did not timely cure the default period, and, per the Notice, the lease terminated after three days from the date of service of the notice. *Id.* As such, Highgate then filed its FED Action, using the court-mandated Small Claims Form 3.6 and noting the basis for its FED Action and possession of the Property as “You failed to vacate the above-stated property after the termination of your tenancy. Pursuant to IA Code Section 648.1(2), you are now a resident holding over unlawfully.” D0001 (Highgate’s Petition).

The small claims hearing on this matter was held on March 12, 2025. Both parties appeared *pro se*. *See* Exhibit C (Audio Recording of March 12, 2025 FED Hearing).¹ At the hearing, the magistrate judge raised, *sua sponte*, the affirmative defense of the peaceable possession statute set forth by Iowa Code section 648.18,

¹ The magistrate judge’s audio recording of the small claims hearing will be sent to the Court via thumbdrive.

explaining that “the notice was faulty” and “it’s just not fair notice” due to such statute. *See id.* Following the hearing, the magistrate judge entered an order dismissing Highgate’s FED Action, ruling the notice was defective:

[The property manager] testified that the amount requested in the 3 day notice is for both January and February rent. The 3 day notice is defective because it asks for both January and February rent. Peaceable possession applies to January 2025 rent pursuant to Iowa Code section 648.18. Since the notice asks for rent for a period of time barred by peaceable possession, the notice is deficient and the matter must be dismissed.

See D0019.

On March 14, 2025, Highgate filed a motion to reconsider, which was denied on the same day. *See* D0020; D0021.

On March 18, 2025, Highgate filed a notice of appeal of the magistrate’s order. *See* D0024. On March 26, 2025, Highgate filed a memorandum of authorities in support of its appeal. *See* D0027. A hearing on the appeal was held on March 27, 2025. *See* D0025. On April 3, 2025, the Honorable Gregory Brandt, District Associate Judge, affirmed the magistrate judge’s ruling, holding:

The three-day notice should have only been for February delinquent rent. Since the landlord did not take any action in January, that month would fall into the peaceable possession restriction. In this case, since the Defendant demanded rent in excess of the delinquent period, the notice to the tenant was misleading and therefore not enforceable.

The Court does agree that the landlord would have the right to terminate that lease agreement, but that does not grant them immediate possession of the property. If that were the case, the concept of peaceable possession would have not [sic] relevance. The landlord would still

need to give the appropriate notice of holding over pursuant to Iowa Code Section 562.34.

D0028.

ISSUES PRESENTED

This appeal involves the continued divergence of opinions from small claims magistrate judges within Polk County and across the state in regard to Iowa's peaceable possession statute despite two Court of Appeals' decisions addressing this topic, necessitating Supreme Court guidance on this topic. Specifically, this appeal involves the following questions:

- (1) Is a landlord's notice of nonpayment of rent to tenant under section 562A.27(2) (or the companion statute in Chapter 562B of section 562B.25(2)) deficient if it contains an amount to cure that is greater than the current month's rent when utilized by the landlord in a FED action based upon the tenant's holdover status after termination of the lease?
- (2) A similar, but slightly different question of whether Iowa's peaceable possession statute, Iowa Code section 648.18, bars an eviction for holdover tenancy under section 648.1(2) after the tenant failed to vacate the leased premise following termination of their lease after failure to cure their nonpayment default as set forth in a notice of nonpayment containing a rent balance that is more than the current month's unpaid rent (i.e., multiple months of unpaid rent)?
- (3) Finally, if the peaceable possession statute does apply to bar a FED action, may it be raised by a court *sua sponte*?

By the plain language of Iowa's landlord-tenant statutes and the existing appellate case law (discussed below), Highgate's notice was not defective, and Iowa's peaceable possession statute does not apply in this case. Despite that, many

of Iowa’s magistrate and district court judges inconsistently rule that such notices are defective and/or rule that the peaceable possession statute is a bar in such cases—often, *sua sponte*.²

² Judges across Iowa are inconsistent in applying Iowa’s landlord-tenant laws to these issues.

Some judges get it right and follow the Court of Appeals’ decisions on point. *See, e.g., Glenwood MPH 2 LLC v. Daelonn Thomas*, Polk County Case No. SCSC708328 (September 25, 2023) (obtaining default judgment in case where landlord’s nonpayment notice contained more than two months’ rent); *Glenwood MPH 2 LLC v. Miguel Ceballas*, Polk County Case No. SCSC708326 (September 25, 2023) (same); *Lakeside Estates, LLC v. Ana Gloria Vasquez-Martin*, Pottawattamie County Case No. SCSC131176 (April 3, 2023) (same); *Lakeside Estates, LLC v. Ryeland P. Barnes*, Pottawattamie County Case No. SCSC131172 (April 3, 2023) (same); *Lakeside Estates, LLC v. Daniel E. Martinez*, Pottawattamie County Case No. SCSC131170 (April 3, 2023) (same); *Iowa City MPH v. Nicole Jovel & Miguel Lovel Lopez*, Johnson County Case No. SCSC108179 (December 2, 2024) (same); *Colorado Senior Lofts v. Randall Jespersen*, Muscatine County Case No. SCSC060350 (September 21, 2023) (same); *Midwest Country Estates v. Lynn Anderson*, Dallas County Case No. SCSC048354 (August 4, 2023) (same); *MH Midwest LLC v. Michelle Gillespie*, Dallas County Case No. SCSC046012 (January 21, 2022) (same); *Spencer Property Management v. Jasmine Cutting*, Warren County Case No. SCSC036903 (October 10, 2023) (same); *Hazleton MHP LLC v. Sean Cheeks*, Buchanan County Case No. SCSC026298 (May 11, 2023) (same); *Park View MHP IA v. Lyle Kolsrud*, Allamakee County Case No. SCSC017775 (May 8, 2024) (same); *Park View MHP IA v. John Ehde*, Allamakee County Case No. SCSC017764 (April 25, 2024) (same); *Waukon Mobile Home Community v. Austin Jaramillo*, Allamakee County Case No. SCSC017640 (June 21, 2023) (same); *West Branch Village v. Jacqueline Loggins*, Cedar County Case No. SCSC015446 (November 9, 2023) (same); *West Branch Village Property v. Marco Galvan*, Cedar County Case No. SCSC015445 (November 9, 2023) (same); *West Branch Village, LLC v. Cassie Jean Isbell*, Cedar County Case No. SCSC015322 (April 6, 2023) (same); *West Branch Village, LLC v. Amanda J. Engledow*, Cedar County Case No. SCSC015321 (April 6, 2023) (same); *West Branch Village, LLC v. Melinda Gooding*, Cedar County Case No. SCSC015286 (February 9, 2023) (same); *West Branch Village, LLC v. Jeremy Wiles*, Cedar County Case No. SCSC015131 (June 2, 2022) (same); *Eastgate MHC LLC v. Rubon Bokmej*, Black Hawk County Case No. SCSC195628 (December 30, 2024) (obtaining judgment in contested case where landlord’s nonpayment notice contained more than two months’ rent); *Eastgate MHC LLC v. Rubon Bokmej*, Black Hawk County Case No. SCSC195626 (January 3, 2025) (same); *Lakeside Estates v. Jennai Kathryn Faulkner*, Pottawattamie County Case No. SCSC134345 (June 4, 2024) (same); *Lakeside Estates, LLC v. Rickard Baker*, Pottawattamie County Case No. SCSC131168 (April 3, 2023) (same); *Lakeside Estates, LLC v. Mary Ann Lee*, Pottawattamie County Case No. SCSC131570 (June 6, 2023) (same); *Lakeside Estates, LLC v. Alexandria R. Holstein*, Pottawattamie County Case No. SCSC131175 (April 3, 2023) (same); *Park View MHP v. Brennan Frick*, Allamakee County Case No. SCSC017717 (November 29, 2023) (same); *Park View MHP v. Jennifer Kassinger*, Allamakee County Case No. SCSC017716 (November 29, 2023) (same);

Accordingly, there are three issues in this case where the District Court erred:

1) in ruling that Highgate's notice for nonpayment of rent was defective, 2) in determining that Iowa's peaceable possession statute barred Highgate's FED Action for holdover tenancy, and 3), assuming the peaceable possession statute does apply, raising the statute *sua sponte* for Gant's benefit, with Gant neither raising this affirmative defense nor providing facts in support of it.

First, the District Court clearly erred in holding that Highgate's Notice of Nonpayment was defective. Iowa landlords are entitled to terminate residential lease agreements for nonpayment of rent after providing tenants with a three-day notice of nonpayment and intent to terminate. *See* Iowa Code § 562A.27(2) ("If rent is unpaid when due and the tenant fails to pay rent within three days after written notice

Trinity Property Consultants VA7 Jordan Creek, LLC d/b/a ReNew Jordan Creek v. Caleb Sadler, Polk County Case No. SCSC698746 (May 1, 2023) (on a district court appeal from the magistrate's dismissal, reversing and holding that the notice containing multiple months' rent was valid and landlord's petition for holdover tenancy should be granted); *Trinity Property Consultants VA7 Jordan Creek, LLC d/b/a ReNew Jordan Creek v. Kerone Q. Williams*, Polk County Case No. SCSC698745 (May 1, 2023) (same).

While other judges get it wrong. *See, e.g., Reagan Partners LLC v. Aislinn Martin*, Polk County Case No. SCSC736502 (January 10, 2025) (magistrate's order dismissing landlord's FED finding three day notice invalid because it included multiple months of rent); *Wilkins Managing Member LC v. Derek McIntosh*, Polk County Case No. SCSC736466 (January 17, 2025) (magistrate's order dismissing landlord's FED under section 648.18 because petition alleged more than current month's rent); *R&T Lofts v. Sara Bravo*, Polk County Case No. SCSC740092 (April 4, 2025) (same); *Jocebee LLC v. Amber Renee Wilson*, Henry County Case No. SCSC022942 (May 24, 2023) (district court order affirming magistrate's ruling that even though the landlord's filing of an FED action before end of the cure period invalidated that action, it did not affect validity of the lease termination when the tenant failed to cure).

by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement”).³ Importantly, section 562.27(2) does not require the nonpayment notice to include *only* the current month’s rent. *See* Iowa Code § 562.27(2). In fact, section 562A.27(2) only requires that the three-day notice be in writing and give notice of nonpayment and intention of the landlord to terminate the lease if the rent is not paid within three days. *See id.*

In the present case, Highgate’s Notice of Nonpayment satisfies all the requirements of section 562A.27(2). It was served in writing, it advised Gant that if Gant failed to cure the nonpayment of rent within three days that the lease would terminate, and it also advised Gant that Gant could be evicted for holding over pursuant to Iowa Code section 562A.34(4). *See* D0003. Accordingly, the District Court erred in ruling that the Notice was defective because it contained multiple months of rent. Nothing in the statute prohibits that. *See also Garrison v. Fetters*, 383 N.W.2d 550, 553 (Iowa 1986) (holding a three-day notice under section

³ The general rule is that before an FED action may be brought under any ground specified in section 648.1, a three-day notice to quit must be served on a defendant. *See* Iowa Code 648.3(1). However, section 648.3(1) provides an exception to that general rule, providing that a landlord may commence an FED action immediately if it has served a three-day notice for nonpayment of rent and has terminated the lease in accordance with section 562A.27(2). *See* Iowa Code 648.3(1) (“Before action can be brought in any except the first of the above classes, three days' notice to quit must be given to the defendant in writing. However, a landlord who has given a tenant three days' notice to pay rent and has terminated the tenancy as provided in section 562A.27, subsection 2, or section 562B.25, subsection 2, if the tenant is renting the mobile home or the land from the landlord may commence the action without giving a three-day notice to quit.”).

562A.27(2) is valid so long as the tenant knows that they owe rent and that it is past due; inclusion of the amount of rent due or due date is not required).⁴

Second, the District Court erred in dismissing this case under Iowa's peaceable possession statute. Once a residential lease agreement is terminated, parties in possession hold the property unlawfully. *Bernet v. Rogers*, 519 N.W.2d 808, 811 (Iowa 1994) ("The only question in a forcible entry and detainer action is whether the defendant is wrongfully detaining possession of the real property at the time of the trial.") (citing *Rudolph v. Davis*, 30 N.W.2d 484, 486 (Iowa 1948)). Accordingly, a landlord's cause of action for holdover tenancy accrues at the time the lease terminates. To avoid peaceable possession, the landlord must bring its petition for holdover tenancy within 30 days. *See* Iowa Code § 648.18 ("Thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action

⁴ It bears mentioning that, even if Iowa Code section 562A.27(2) required inclusion of the amount of rent due (which, as discussed, does not), requiring only the current month's rent amount and not the entire amount of back rent would be confusing to the tenant as to how much they actually owe under their lease.

Furthermore, such an interpretation confuses the statutes. The purpose of section 562A.27(2) is to provide a summary procedure for a landlord to terminate a lease for nonpayment of rent. Standing alone, it is not concerned with the eviction process, it merely provides for a mechanism for early termination of a lease. A notice under section 562A.27(2) is referenced in the eviction statute, Chapter 648, in section 648.3(1), as a substitute for the notice requirement under that Chapter. It cannot be the case that the legislature intended that landlords consider two forms of notice under 562A.27(2), one for termination of the lease and another for satisfaction of notice requirement under Chapter 648. Instead, section 648.3(1) is clear: a valid notice under section 562A.27(2) is a valid notice to bring an eviction action under section 648.1. Therefore, because a notice under section 562A.27(2) that contains multiple months rent is valid, it satisfies section 648.3(1) and is sufficient for an FED action under section 648.1.

accrues is a bar to this proceeding.”).

In the present case, because Gant failed to cure the default of nonpayment, the lease terminated as of midnight on February 21, 2025—three days after the Notice of Nonpayment was deemed served on February 18, 2025.⁵ Because Gant maintained unlawful possession of the Property at the time the lease terminated, Highgate’s cause of action for holdover tenancy accrued as of February 22, 2025. Accordingly, when Highgate filed its FED Action for holdover tenancy three days later, on February 25, 2025, the thirty-day peaceable possession bar obviously could not apply.

Taken together, these issues illustrate that the District Court erred by essentially recasting Highgate’s petition as one for nonpayment of rent instead of holdover tenancy. Most troublesome with the Small Claims Order and District Court Order is that both ignore the legal precedent provided by Highgate, including both the *Spencer* and *AHEPA* cases (discussed below), that expressly instruct magistrates and district courts *not* to recast a landlord’s petition in this way. *See* D0002 (Polk County District Court order in *Trinity Property Consultants VA7 Jordan Creek, LLC d/b/a ReNew Jordan Creek v. Caleb Sadler*, Polk County Case No. SCSC698746

⁵ Pursuant to section 648.3(3), a notice to quit that is served by mail (which the Gant notice was, *see* D0006, Certified Mail Receipt dated February 14, 2025), is deemed served four days *after* the notice is deposited in the mail and postmarked for delivery. Accordingly, a notice deposited in the mail and postmarked on February 14, 2025 is deemed served under section 648.3(3) on February 18, 2025.

(May 1, 2023), citing both *Spencer* and *AHEPA* cases); D0027 (Highgate’s Memorandum of Authorities, citing *Spencer* and *AHEPA*).

As mentioned, two Iowa Court of Appeals decisions, Justice McDonald’s decision in *Des Moines RHF Housing, Inc. v. Spencer*, 919 N.W.2d 768 (Table), No. 17-1465, 2018 WL 3057604, at *1 (Iowa Ct. App. June 20, 2018) and Judge Danilson’s decision in *AHEPA 192-1 Apartments v. Smith*, 810 N.W.2d 25 (Table), No. 11-0167, 2011 WL 6669744, at *6–7 (Iowa Ct. App. Dec. 21, 2011), have expressly affirmed Highgate’s practices described in this case.

In *Spencer*, the landlord served the defendant with a “Notice of Nonpayment of Rent, Notice of Termination of Lease, and Notice to Quit” on May 15, 2017. *See* 919 N.W.2d 768 (Table), at *1 (Iowa Ct. App. June 20, 2018). The notice demanded payment for unpaid rent for April 2017 and May 2017. *Id.* The notice stated, “[i]f the full amount of past due rent is not paid by May 22, 2017 (the ‘cure date’), then the Lease Agreement shall terminate on June 21, 2017 (‘the termination date’) without any further notice to you.” *Id.* On June 22, 2017—one day after the termination of the lease due to nonpayment of rent and after the tenant failed to vacate—the landlord filed its FED action against the tenant for holdover tenancy under Iowa Code section 648.1(2). *Id.* After a hearing, the magistrate dismissed the landlord’s petition under Iowa Code section 648.18 for peaceful possession, reasoning that, because the landlord’s notice sought payment for both April and May

2017 rents, that it violated the peaceable possession statute. *Id.* The landlord appealed to the district court. The district court affirmed the magistrate's decision, determining that the cause of action brought by landlord was *actually* an action for nonpayment, and *not* an action for the holdover tenancy, despite the explicit terms of the landlord's petition which stated otherwise. *Id.*

On appeal, the Iowa Court of Appeals vacated the judgment of the district court and ruled in favor of the landlord. The Court ruled the district court erred: 1) by recasting the landlord's petition as being an action for nonpayment instead of holdover tenancy; and 2) by misapplying section 648.18's peaceful possession as a bar to the landlord's holdover tenancy argument when the landlord had brought its action only a day after termination of the lease. *Id.* at *62. Specifically, the Court explained as follows:

In this case, the district court committed two errors. First, the district court erred in recasting RHF Housing's petition. RHF Housing filed its petition in this case against Spencer as a holdover tenant pursuant to section 648.1(2). The district court treated the petition as if it asserted a claim arising under subsection (5) for nonpayment of rent. The district court erred in so doing. *See Haskenhoff v. Homeland Energy Solutions, LLC*, 897 N.W.2d 553, 579 (Iowa 2017) ("Haskenhoff is the master of her own pleadings."); *Grimm v. US West Commc'ns, Inc.*, 644 N.W.2d 8, 14 (Iowa 2002) (stating "the plaintiff is the master of [her own] complaint" and may "intentionally craft her petition" to avoid certain legal issues).

Second, the district court erred in holding the peaceable possession defense barred RHF Housing's use of the summary remedy. An action for forcible entry and detainer based on a tenant holding over after the termination of a lease accrues at the time of lease termination. *See*

Smith, 2011 WL 6669744, at *7 (“AHEPA’s FED cause of action was premised upon the ground that Smith was holding over after the termination of the lease accrued when the lease was terminated.”); *see also Petty*, 584 N.W.2d at 307 (“In the action before us the landlord’s cause of action accrued on June 19, 1996, when the lease terminated and the tenant did not vacate the premises.”); *Hillview Assocs. v. Bloomquist*, 440 N.W.2d 867, 873 (Iowa 1989) (finding the “cause of action accrued at the end of the sixty days” when landlord gave sixty-day notice of termination of lease). Here, RHF Housing terminated the lease on June 21 and initiated this action on June 22. Therefore, Spencer did not have peaceable possession of the property for thirty days after the accrual of the cause of action. The peaceable possession defense is inapplicable here.

Id.

In *AHEPA*, the landlord provided a Notice of Termination and Notice to Quit to the tenant based on a physical assault and/or the threat of physical assault occurring on September 14, 2010, and on September 22, 2010. *Id.* at *1. The landlord filed its FED action on November 2, 2010, asserting the defendant’s “lease terminated as of midnight on October 31, 2010 . . . and [defendants] have failed to surrender possession The incident or incidents giving rise to the notice of termination and notice to quit includes physical assault and/or the threat of physical assault directed to and against the other tenants, and occurring on September 10 and/or September 14, 2020, and on September 22, 2010.” *Id.* The defendant moved to dismiss the action based on several defenses, including that the action was time barred under section 648.18. *Id.* at *2. The magistrate rejected the tenant’s arguments and entered judgment in favor of the landlord. The defendant appealed.

Reversing the magistrate, the district court ruled the notice was defective. The district court rested its decision on the “‘thirty days’ peaceable possession’ bar of Iowa Code section 648.18, as well as the court’s finding that AHEPA had, in effect, provided too much notice to Smith before commencing the FED action.” *Id.* at *3. The district court determined the landlord’s forcible entry and detainer cause of action accrued at the time of the tenant’s physical assault or threat of physical assault upon other tenants even though the landlord asserted that termination was for “material noncompliance” with the lease or “material failure to carry out obligations” under the landlord/tenant act. Accordingly, the district court ruled that the landlord’s cause of action accrues when the “lessee holds contrary to the terms of the lease,” September 22, 2010, and was statutorily barred by Iowa Code section 648.18 because the landlord provided the defendant thirty-days’ notice of termination rather than three-days’ notice and the 30-days’ peaceable possession “clock” begins when the cause of action accrues. *Id.* at *4.

On appeal, the Court of Appeals reversed the district court. It held that the landlord’s forcible entry and detainer action was not time-barred, explaining that the action was premised upon “[w]here the lessee holds over after termination of the lease,” which began on October 31, 2010, when the lease terminated per the Notice of Termination. *Id.* at *6. The *AHEPA* Court expressly explained that it would not recast the petition and would read it according to its plain language. *Id.* The Court

of Appeals went on to state that “simply because a landlord may be able to proceed upon more than one theory to terminate a lease and regain possession, we know of no requirement that the landlord pursue the legal theory that has either the shortest or longest notice requirements.” *Id.* at *7. This decision ultimately stands for the proposition that 1) a court will not recast a forcible entry and detainer petition under grounds not clearly stated and 2) the 30-day peaceable possession clock starts when the cause of action accrues, which is dependent on which cause of action the forcible entry and detainer is brought.

Together, *Spencer* and *AHEPA* establish that a notice for nonpayment of rent that includes multiple months’ rent is not defective and that a landlord is entitled to craft their FED action under whatever legal theory it has at its disposal. The District Court erred in failing to apply established law in this case.

Third, even if the peaceable possession statute did apply, the District Court erred in raising such defense *sua sponte*. As recognized by the Iowa Supreme Court in *Town of Lakota v. Gray*, 35 N.W.2d 841 (Iowa 1949), peaceable possession is an affirmative defense to an FED and requires a showing on the part of the defendant that they have, in fact, possessed the property peaceably in that time. *See Erickson v. Wright Welding Supply, Inc.*, 485 N.W.2d 82, 86 (Iowa 1992) (“An affirmative defense is one which rests on facts not necessary to support the plaintiff’s case.

[citation omitted]. Thus, any defense which would avoid liability although admitting the allegations of the petition is an affirmative defense.”). The Court stated:

This [peaceable possession] statute provides a bar only upon an affirmative showing of *peaceable* possession for the stated time. It is for defendant to make this showing if it does not appear on the face of the petition. It is a part of the limitation. Mere possession is not enough. It is not necessary to hold, as plaintiff argues and as the trial court held, that the petition negatives peaceable possession. It is sufficient if it does not affirmatively show it.

Gray, 35 N.W at 195 (emphasis is original). It is, therefore, improper for a district court to raise the peaceable possession defense on behalf of a defendant *sua sponte*—especially in cases where the defendant does not show up to the FED hearing—because it is the defendant’s burden to prove the possession was, in fact, peaceable.

Based upon the foregoing, further review is necessary in this case to confer substantial justice between the parties, better serve the interests of justice, and ensure the law is properly interpreted and applied to avoid improper infringement of Highgate’s property and procedural rights in this case and future FED actions filed by Highgate and landlords across the state. *See* Iowa R. App. P. 6.104(1)(d).

REQUESTS FOR RELIEF

WHEREFORE, Plaintiff-Appellant, Highgate Ironwood, L.P. respectfully requests that this Court:

- Grant appellate review of the District Court’s challenged orders upon discretionary review;

- Reverse the District Court and enter judgment in favor of Plaintiff-Appellant, Highgate Ironwood, L.P. on its FED Action; and
- All other relief the Court deems just or necessary under these circumstances.

Respectfully submitted,

By: /s/ Jodie McDougal

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 2, 2025, I electronically filed the foregoing Application for Discretionary Review with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules. In addition, copies were served on the *pro se* Defendants-Appellees Jasmine Gant and Parties in Possession by mailing copies via U.S. Mail to their last known address of 2304 Ironwood Dr., Unit 302, in Altoona, Iowa 50009.

By /s/ Jodie C. McDougal