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Kelly Pinion
Lubbock County - County Clerk
Lubbock County, Texas
Nadia Morgan

CC-2026-CV-1124

CAUSE NO. _____

LUKE T. HENRY and JACOB A. HENRY, Plaintiffs,	§ § §	IN THE COUNTY COURT AT LAW NO. #3
v.	§ §	
GAFFORD PROPERTIES, LLC, Defendant.	§ §	LUBBOCK COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Luke T. Henry and Jacob A. Henry file this Original Petition against Gafford Properties, LLC and respectfully show the Court the following:

DISCOVERY CONTROL PLAN AND RULE 47 STATEMENT

1. Plaintiffs intend to conduct discovery under Level 1 of Rule 190.2 of the Texas Rules of Civil Procedure, and this suit is governed by the expedited-actions process of Rule 169. Plaintiffs seek only monetary relief of $250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs. The damages sought are within the jurisdictional limits of this Court.

PARTIES

2. Plaintiff Luke T. Henry is an individual residing in Dallas County, Texas.

3. Plaintiff Jacob A. Henry is an individual residing in Dallas County, Texas.

4. Defendant Gafford Properties, LLC is a Texas limited liability company doing business in Lubbock County, Texas. It may be served with process by serving its registered agent, Margaret Gafford, at its registered office, 2703 19th Street, Lubbock, Texas 79410, or wherever she may be found.

JURISDICTION AND VENUE

5. The Court has jurisdiction because the amount in controversy is within its jurisdictional limits.

6. Venue is proper in Lubbock County under Section 15.002(a)(1) of the Civil Practice and Remedies Code because all or a substantial part of the events giving rise to the claim occurred in Lubbock County, and under Section 15.0115(a) because this is a suit between a landlord and its tenants arising under a lease of real property located in Lubbock County.

FACTS

7. This is a lawsuit that Plaintiffs attempted to avoid. Plaintiffs' attorney contacted Defendant's authorized agent, Reside Rentals, and explained that Defendant was not allowed to deduct a lump sum for a list of charges that could not possibly apply, and that Defendant was also not allowed to deduct for a "deep cleaning" when neither the lease nor the Texas Property Code allowed it.

8. Reside Rentals said that a superior would call back, and no one did. It then refused to provide anything further, and it has never substantively responded.

9. On or about August 15, 2025, Plaintiffs entered into a written residential lease with Defendant for the property at [redacted] (the "Lease" and the "Property"). Defendant is identified in Paragraph 1.1 of the Lease as the owner of the Property and Landlord. Reside Rentals is identified in Paragraph 3.13J as Defendant's broker and property manager. Plaintiffs are the only Tenants named in Paragraph 1.1.

10. The primary term of the Lease ran from August 15, 2025 to July 20, 2026. The monthly rent was $1,800.00.

11. Plaintiffs paid a security deposit of $1,600.00 under Paragraph 1.10A of the Lease. Defendant's own accounting describes that sum as "Mgmt Held Security Deposits."

12. The Property is finished in hardwood flooring throughout, with tile in the bathrooms. There is no carpet in the Property, and there was none at any time during the tenancy.

13. The garage of the Property contains built-in cabinets belonging to Defendant. Those cabinets were locked for the entire lease term, Plaintiffs never had access to them, and they contained Defendant's own belongings at the beginning of the term and at surrender.

14. In the final week of the lease term, the air conditioning system at the Property would not cool the Property below approximately eighty degrees Fahrenheit.

15. Defendant's maintenance technician attended the Property on at least three occasions during that period. On one of those visits the technician left a replacement air filter at the Property, which Plaintiffs installed. That filter became wet as a result of the condition of Defendant's equipment, and Defendant's technician replaced it again.

16. Paragraph 2.6D(1) of the Lease provides that Landlord will pay to repair conditions in the Property in need of repair, including "heating and air conditioning systems," where not caused by Tenant or Tenant's negligence. Defendant performed that obligation, at its own expense, in the week before Plaintiffs surrendered the Property.

17. Plaintiffs surrendered the Property on July 20, 2026, the expiration date of the primary term of the Lease, and gave Defendant written notice of a forwarding address that same day.

18. On July 21, 2026, the day after the term expired, Defendant's inspector walked the Property and photographed it, producing fifty images between 8:40:58 a.m. and 8:46:25 a.m. Defendant produced those photographs to Plaintiffs on August 18, 2026.

19. Those photographs show no carpet in the Property. They show no nail hole in any wall. They do not depict an air filter or a smoke detector. Five frames show lighting fixtures illuminated. The conditions they record are a pencil on a windowsill, toothpaste near a drain, a few hairs, and cobwebs.

20. The only items shown in the garage that could be attributed to Plaintiffs would fit within a fraction of a single trash receptacle. Plaintiffs paid for trash service at the Property throughout the term under Paragraph 1.11 of the Lease, and a trash receptacle was on the premises.

21. On August 18, 2026, twenty-nine days after Plaintiffs surrendered the Property and twenty-eight days after its inspector photographed it, Defendant issued a notice captioned "Security Deposit Return" stating that it had withheld $725.00 of the $1,600.00 deposit and would refund $875.00. Defendant stated two deductions: $400.00 for "Replaced burnt out light bulbs, replaced HVAC filter, replaced batteries in smoke detectors, removed nails and brads from walls, cleared debris from disposal," and $325.00 for "Deep clean of entire property, including bedrooms, bathrooms and common areas."

22. The $400.00 entry bundles five separate tasks into a single figure. It states no unit price for any item, no labor hours or rate, no materials cost, and is unsupported by any invoice or work order.

23. On information and belief, Defendant's notice was not an isolated act but the regular practice of its agent, Reside Rentals. Reside Rentals charges departing tenants for a "deep clean" that its cleaning vendor performs under a standing arrangement regardless of the condition in which the tenant leaves the property; assesses the same short list of move-out charges—cleaning, light bulbs, air filters, blinds, and nail holes—against tenant after tenant without regard to whether the condition charged for existed or was caused by the tenant; combines those charges

into undifferentiated figures; and, when a tenant objects, neither produces an invoice or itemized receipt nor withdraws the charge.

24. Defendant charged Plaintiffs for replacing an HVAC filter that Defendant's own technician had supplied and installed days earlier at Defendant's own expense.

25. Defendant charged Plaintiffs for removing nails from walls. Paragraph 2.5D(3) of the Lease expressly permits "a reasonable number of small nails" to be "used to hang pictures in sheet rock." Defendant's photographs show no nail hole.

26. Defendant charged Plaintiffs for replacing burnt-out light bulbs. Paragraph 1.10D(1)(j) permits a deduction only for bulbs that are "missing or burned-out," and only for bulbs "at the same location and of the same type and quality that are in the Property on the Commencement Date." Defendant's photographs show lighting fixtures illuminated, and Defendant has identified no bulb by location or type.

27. Defendant charged Plaintiffs $325.00 for a "deep clean of entire property." The only move-out cleaning obligation the Lease places on Plaintiffs is the Special Provision at Paragraph 3.6, which provides that "Owner will have carpets professionally cleaned upon move-out at tenants expense." The Property has no carpet. Paragraph 2.4A required Plaintiffs only to leave the Property "in a clean condition free of all trash, debris, and any personal property." Defendant's notice does not allege that Plaintiffs failed that standard and identifies no room, no surface, and no condition.

28. Defendant charged Plaintiffs for clearing debris from a disposal. Defendant has identified no debris, no condition of the disposal, and no cost for the task, and has produced no invoice or work order for it.

29. On August 18, 2026 at 11:13 a.m., Defendant's property manager, Carley Anderson, sent Plaintiffs' counsel a link to the move-out photographs.

30. Promptly after receiving the notice on August 18, 2026, Plaintiffs' counsel telephoned Ms. Anderson. Counsel identified himself as an attorney who has handled landlord-tenant matters. Counsel explained that the Property Code does not permit a deduction for cleaning beyond normal wear and tear, that the Lease does not permit one either, that the list of deductions Defendant had provided was not an itemized list, and that the deductions were not correct or permitted.

31. Ms. Anderson responded only that the Lease allowed the deductions. She provided no further basis for them and no discussion of them of any kind. She said that her superior would telephone counsel. No one telephoned. At 3:31 p.m. that day Ms. Anderson sent an email directing counsel's further questions to another address at the same office. Defendant withdrew no charge, reduced no charge, and produced no invoice or itemized list.

32. Plaintiffs received $875.00. Defendant has retained $725.00.

33. Defendant is the "landlord" under Section 92.001(2) of the Property Code, which defines the term as the owner of the dwelling and excludes a manager or agent of the landlord. The duties Subchapter C imposes, and the liability Section 92.109 attaches, therefore belong to Defendant. *See Lost Creek Ventures, LLC v. Pilgrim*, No. 01-15-00375-CV, slip op. at 24 (Tex. App.—Houston [1st Dist.] June 30, 2016) (mem. op.) ("the owner of leased premises may be held liable under Chapter 92, even if he or she is not a party to the lease"). Reside Rentals, which the Lease names as Defendant's broker and property manager in Paragraph 3.13J, and Ms. Anderson inspected the Property, assessed the deductions, issued the notice, and answered Plaintiffs'

objections on Defendant's behalf and within the scope of that authority. Their acts, knowledge, and intent are Defendant's. *Celtic Life Ins. Co. v. Coats*, 885 S.W.2d 96, 98–99 (Tex. 1994).

CAUSES OF ACTION

COUNT 1 — WRONGFUL RETENTION AND BAD FAITH (Texas Property Code Sections 92.104 and 92.109)

34. Plaintiffs incorporate the preceding paragraphs.

35. Section 92.104(b) of the Texas Property Code provides that a landlord "may not retain any portion of a security deposit to cover normal wear and tear." Section 92.104(a) permits deduction only of "damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease." Section 92.109(c) places on Defendant the burden of proving that the retention of any portion of the deposit was reasonable.

36. Section 92.109(d) provides that a landlord "who fails either to return a security deposit or to provide a written description and itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith." Sending a document within thirty days does not answer that subsection unless the document is an itemization. In *Thweatt v. Dudley*, No. 07-15-00008-CV (Tex. App.—Amarillo Sept. 22, 2015, no pet.) (mem. op.), the landlord timely furnished her tenants a written description of the items she said required repair, and timely told them what the repairs cost in total. What the record did not show was that she "timely attributed a cost of repair to each purported item of damage." The Seventh Court of Appeals—the court to which an appeal from this Court lies—held: "Because she did not itemize the intended charges as required by statute, she was presumed to have acted in bad faith."

37. Defendant's notice of August 18, 2026 is that document. It names five separate tasks—replacing burnt-out light bulbs, replacing an HVAC filter, replacing smoke detector batteries, removing nails and brads from walls, and clearing debris from a disposal—and states a

single figure, $400.00, for all five together. It attributes no cost to any one of them. Defendant accordingly did not provide Plaintiffs with an itemization of deductions within thirty days of surrender, and is presumed under Section 92.109(d) to have acted in bad faith as to that charge.

38. The presumption is not merely a matter of who speaks first. "Absent rebutting evidence, the presumption that the landlord acted in bad faith compels a finding of bad faith." *Pulley v. Milberger*, 198 S.W.3d 418, 428 (Tex. App.—Dallas 2006, pet. denied). To defeat it the landlord must prove her own good faith, that is, "honesty in fact in the conduct or transaction concerned." *Id.* The landlord in *Thweatt* did not. She did not testify, and she did not explain "why she did not itemize the deductions she intended to take" or "how she derived the purported $1,800 cost of repair." Having failed to rebut the presumption, she forfeited any right she had to keep any part of the deposit, and her tenants recovered three times the whole of it together with their reasonable attorney's fees.

39. The evidence the courts have recognized as capable of rebutting the presumption is not available to Defendant. That evidence is that the landlord is an amateur lessor because the residence is his only rental property; that the landlord did not know of the requirement to submit an itemized list of deductions; that extensive damage was done to the residence; that the landlord attempted some of the repairs himself to save money; or that the landlord had a reasonable excuse for the delay. *Pulley*, 198 S.W.3d at 428–29. Defendant is a limited liability company that holds the Property out for lease through a licensed real estate broker and professional property manager. *Cf. Marco v. Kirkman*, No. 03-24-00133-CV (Tex. App.—Austin June 26, 2026, pet. filed) (mem. op.) (landlord's having leased the property since 2006 "militated against a finding that she was an 'amateur lessor' who was unaware of the statutory provisions regarding security deposits"). And

Defendant's own photographs, taken the morning after surrender, record no extensive damage of any kind. They record a pencil, toothpaste, a few hairs, and cobwebs.

40. Defendant retained $725.00 of Plaintiffs' security deposit for charges that are not authorized by the Lease, that are barred by Section 92.104(b), that Defendant's own records and photographs contradict, and that Defendant has never supported with any invoice, receipt, or work order.

41. Defendant acted in bad faith. Defendant charged Plaintiffs $325.00 to "deep clean" a property whose Lease imposes no move-out cleaning obligation on the tenants except the cleaning of carpet, and which has no carpet; for an air filter Defendant's own technician had supplied and installed at Defendant's expense; for nail holes that do not appear in Defendant's own photographs; for light bulbs at a property Defendant's own photographs show with fixtures lighted; and for clearing a disposal without identifying any debris or any cost. Each of these was identified to Defendant before suit. Defendant withdrew nothing, produced no invoice or itemized list, and responded only that the Lease allowed the deductions. And the charges follow the regular practice of Defendant's agent described above, which is itself evidence that they were assessed without regard to the condition of the Property and with the intent to keep a refund that was lawfully due.

42. Plaintiffs do not depend on the presumption. A tenant may prove a landlord's bad faith directly, and the presumption is not a prerequisite to recovery under Section 92.109(a). *Marco v. Kirkman*, No. 03-24-00133-CV (Tex. App.—Austin June 26, 2026, pet. filed) (mem. op.) ("although evidence giving rise to the statutory presumption is one way that bad faith may be established, it is not the only way"). A residential landlord acts in bad faith if she either "acts in dishonest disregard of the tenant's rights or intends to deprive the tenant of a lawfully due refund."

Schneider v. Whatley, 535 S.W.3d 236, 241 (Tex. App.—El Paso 2017, no pet.) (quoting *Johnson v. Waters at Elm Creek, L.L.C.*, 416 S.W.3d 42, 47 (Tex. App.—San Antonio 2013, pet. denied)).

43. A landlord acts in bad faith when it retains a security deposit in "dishonest disregard of the rights of the tenant," which implies "an intention to deprive the tenant of the refund lawfully due." *Wilson v. O'Connor*, 555 S.W.2d 776, 780 (Tex. Civ. App.—Dallas 1977, writ dism'd). In *Alltex Construction, Inc. v. Alareksoussi*, 685 S.W.2d 93, 96 (Tex. App.—Dallas 1984, writ ref'd n.r.e.), the court affirmed a jury finding of bad faith against a landlord on uncontroverted evidence that the landlord's "own records show[ed]" the condition it charged the tenant to remedy; that the landlord "charged an arbitrary amount for alleged damages"; that "the charge . . . was not based on actual cost"; and that "the itemized list of deductions was vague and ambiguous." The court so held on a record in which the landlord had timely furnished both a written description and an itemization, and in which no presumption of bad faith was therefore applied. 685 S.W.2d at 94, 96.

44. *Marco* is the nearer case on the documents. The landlord there sent a list of thirteen deductions, each separately described and each carrying its own price. She was nonetheless found to have retained the deposit in bad faith, and that finding was affirmed: the tenant testified that "no photos, receipts, or supporting documents accompanied the list," and the trial court "could have reasonably inferred that by failing to provide [the tenant] with documentation of the alleged damages, [the landlord] was intentionally making it more difficult for [him] to challenge the amount of each deduction she was claiming"; and her photographic evidence "was inconsistent with [her] trial testimony concerning the severity of the damage." Defendant did less than that landlord did, and stands worse on every ground. It did not price the five tasks separately. It

produced no invoice, receipt, or work order, and refused to produce one when asked before suit. And its photographs do not merely fail to corroborate the charges; they contradict them.

45. Each of those facts is present here, and each is established by Defendant's own documents. Defendant's own records show that Defendant's technician supplied and installed the air filter Defendant charged Plaintiffs to replace. Defendant's own photographs show no nail hole in any wall and show lighting fixtures illuminated. Defendant charged an arbitrary amount: $400.00 for five unrelated tasks, in a single round figure, with no unit price for any of them. No charge is based on actual cost, because Defendant has produced no invoice, receipt, or work order for any item, and produced none when asked before suit. And the list Defendant furnished is not merely "vague and ambiguous" in the sense described in *Alltex*; it is a single number standing for five separate charges, so that no charge within it can be tested at all.

46. Under Section 92.109(a), Defendant is liable to Plaintiffs for the sum of $100.00, three times the $725.00 wrongfully withheld, and Plaintiffs' reasonable attorney's fees in this suit—$2,275.00 together with those fees. Three times the portion withheld is the measure of the deposit's recovery, not an addition to it. *See Thweatt*, No. 07-15-00008-CV (tenants "entitled to recover not only three times the portion of the deposit wrongfully withheld (i.e. all of it) but also their reasonable attorney's fees").

COUNT 2 — FAILURE TO ACCOUNT (Texas Property Code Sections 92.104(c) and 92.109(b))

47. Plaintiffs incorporate the preceding paragraphs.

48. Section 92.104(c) requires a landlord who retains any part of a security deposit to deliver the balance "together with a written description and itemized list of all deductions."

49. A landlord does not itemize by naming the work and stating a total. In *Thweatt v. Dudley*, No. 07-15-00008-CV (Tex. App.—Amarillo Sept. 22, 2015, no pet.) (mem. op.), the

landlord furnished a timely written description of the items she claimed required repair and a timely statement of what those repairs cost in total, and the Seventh Court of Appeals held that because the record showed no evidence she "timely attributed a cost of repair to each purported item of damage," she "did not itemize the intended charges as required by statute."

50. Defendant's $400.00 entry is not an itemized list. It bundles five unrelated tasks into a single figure with no unit price, no labor hours or rate, no materials cost, and no supporting documentation, and Defendant declined to supply any when asked.

51. A "written description and itemized list of all deductions" means a statement from which the tenant can identify what he is being charged for and test whether the charge is owed. A list that is "vague and ambiguous" is evidence of the landlord's bad faith. *Alltex*, 685 S.W.2d at 96. Defendant's $400.00 entry is not a vague itemization; it is not an itemization. Five distinct tasks, each governed by a different provision of the Lease and each requiring different proof, were collapsed into one number that answers none of them.

52. Defendant's failure to provide a written description and itemized list of all deductions was in bad faith. Under Section 92.109(b), Defendant has forfeited the right to withhold any portion of the security deposit—including any charge the Lease might otherwise have authorized—and has forfeited the right to bring suit against Plaintiffs for damages to the premises. That is the forfeiture *Thweatt* enforced: the landlord's failure to itemize "resulted in her forfeiting any right she had to keep any of the deposit." Defendant is liable for Plaintiffs' reasonable attorney's fees.

COUNT 3 — BREACH OF CONTRACT (In the alternative)

53. Plaintiffs incorporate the preceding paragraphs.

54. The Lease is a valid and enforceable contract. Plaintiffs performed. Defendant breached the Lease by retaining $725.00 of the security deposit for charges the Lease does not authorize, including a cleaning charge outside Paragraph 3.6, a charge for repairs Paragraph 2.6D(1) assigns to Defendant, and a charge for conduct Paragraph 2.5D(3) expressly permits. Plaintiffs were damaged in the amount of $725.00, plus prejudgment interest.

ATTORNEY'S FEES

55. Plaintiffs are entitled to recover their reasonable and necessary attorney's fees under Sections 92.109(a) and 92.109(b) of the Texas Property Code. Plaintiffs are separately entitled to recover attorney's fees, prejudgment interest, and all other costs of litigation under Paragraph 3.9 of the Lease, which provides that "[a]ny person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, attorneys fees, cost of service, and all other costs of the legal proceeding from the non-prevailing party."

56. Plaintiffs' counsel charges $650.00 per hour, which is a reasonable and customary hourly rate for an attorney of his experience in this type of matter. To date, Plaintiffs have incurred 6.0 hours of attorney time, or $3,900.00 in reasonable and necessary attorney's fees. Attorney's fees continue to accrue and will continue to accrue through trial.

CONDITIONS PRECEDENT

57. All conditions precedent to Plaintiffs' recovery have been performed, have occurred, or have been waived.

58. Defendant was provided specific notice, through its designated agent, of its failures under the Lease and under Subchapter C of Chapter 92 of the Texas Property Code. Defendant's

agent acknowledged the complaint orally and in writing, and then provided written notice that nothing would be done in response.

DISCOVERY

59. Defendant is required to serve initial disclosures under Rule 194.2 of the Texas Rules of Civil Procedure.

PRAYER

60. WHEREFORE, PREMISES CONSIDERED, Plaintiffs Luke T. Henry and Jacob A. Henry respectfully request that Defendant Gafford Properties, LLC be cited to appear and answer, and that on final trial Plaintiffs have judgment against Defendant:

(a) under Section 92.109(a) of the Texas Property Code, for the sum of $100.00 and three times the $725.00 wrongfully withheld from Plaintiffs' security deposit, a total of $2,275.00;

(b) in the alternative, for actual damages of $725.00 for Defendant's breach of the Lease;

(c) for forfeiture of Defendant's right to withhold any portion of the security deposit, and of Defendant's right to bring suit against Plaintiffs for damages to the premises, under Section 92.109(b) of the Texas Property Code;

(d) for reasonable and necessary attorney's fees under Section 92.109 of the Texas Property Code and under Paragraph 3.9 of the Lease;

(e) for prejudgment and postjudgment interest at the maximum lawful rate;

(f) for costs of court; and

(g) for all other relief, at law or in equity, to which Plaintiffs are justly entitled.

Respectfully submitted,

JOHN HENRY & ASSOCIATES, PLLC

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