

Plaintiff breached the lease by failing to provide central air conditioning and a working furnace as set forth in paragraph 12 of the lease. (exhibit A to Plaintiff's Petition).

4. Plaintiff advertised the rental unit as having central-air conditioning and central-air conditioning in the rental unit was part of the bargain between Plaintiff and Defendant when the lease was signed and/or renewed.
5. Plaintiff failed to provide central air conditioning to the rental unit. Plaintiff also failed to provide a working furnace for the rental unit.
6. Plaintiff has breached the covenant of quiet enjoyment by failing to provide central- air conditioning and a working furnace for the apartment.
7. Plaintiff has unclean hands in that Plaintiff was the first party to breach the alleged lease as set forth in Defendant's Counterclaim.
8. Plaintiff has breached the implied warranty of habitability as a result of its failure to provide and maintain central-air conditioning and its failure to provide a working furnace as well as its failure to fix a water leak in the apartment which damaged Defendant's personal property. Plaintiff is not entitled to recover rent for any month that the premises were entirely or partially uninhabitable.
9. Plaintiff's failure to provide air conditioning and a working furnace to the apartment as well as its failure to fix the leak in the apartment lessened the rental value of the premises and Defendant is entitled to an offset for the diminished rental value of the property.
10. Plaintiff's failure to provide air conditioning and a working furnace to the apartment caused Defendant damages including, the inability to cook causing expenses of eating at restaurants, and loss of use of the apartment and having to leave the apartment to spend

days and nights elsewhere, increased electricity costs and inability to utilize the entire apartment. Defendant is entitled to an offset for these damages.

11. Defendant is entitled to an offset for her emotional distress she has suffered due to the lack of a working central air-conditioning unit and lack of a furnace for the apartment. She also suffered emotional distress and worry for her children living in substandard and uninhabitable conditions.

12. Defendant incorporates by reference Defendant's Counterclaim as if fully set out herein.

WHEREFORE, having fully answered Plaintiff's Petition, Defendant prays this Court for an order dismissing the instant action with prejudice at Plaintiff's costs, or in the alternative, for an order that no rent is owed for the months she has not paid rent, for an offset for the total amount of any rent owed, for an award of reasonable attorney fees, her costs, and for such other and further relief as this Court deems just and proper in the circumstances.

COUNTERCLAIM

Count I – Breach of Implied Warranty of Habitability

COMES NOW Defendant/Counterclaim Plaintiff, by counsel, and for her Counterclaim against Plaintiff/Counterclaim Defendant, states as follows:

1. Plaintiff/Counterclaim Defendant ("Plaintiff"), is a limited liability company doing business in St. Louis County. At all times herein mentioned, Plaintiff owned the rental property located at 3984 Brittany Circle, A., St. Louis, Missouri 63044 (hereinafter "rental property").

2. Defendant/Counterclaim Plaintiff (“Ms. Jackson”) is an individual person who resided in the rental property pursuant to a written or oral lease and resided there with her children for her own personal, household and family purposes and not for a business purpose.
3. Under Missouri Law, all residential lease agreements include an implied warranty of habitability. “[A] landlord impliedly warrants the habitability of leases residential property.” *Detling v. Eldelbrock*, 671 S.W.2d 265, 270 (Mo. banc 1984), *abrogated on other grounds by Heins Implement Co. v. Mo. Highway & Transp. Comm’n*, 859 S.W.2d 681 (Mo. banc 1993).
4. In particular, “a landlord warrants that the dwelling is habitable and fit for living at the inception of the lease and that it will remain so during the entire term. The landlord warrants that he will provide facilities and service vital to the life, health and safety of the tenant and to the use of the premises for residential purpose.” *Id.* (quotation and bracket omitted).
5. During the occupancy, Plaintiff had actual knowledge of significant defects in the apartment including an air-conditioning system that did not work a furnace that was inoperable, and a water leak in the apartment. Ms. Jackson moved into the rental property and signed the lease on or about July 3, 2019. Prior to and at the time of signing the lease, Plaintiff represented to Ms. Jackson that the rental unit had central air-conditioning. The central air conditioning did not work. Ms. Jackson immediately complained to Plaintiff that she had no air conditioning and Plaintiff promised to fix the air conditioning but Plaintiff failed to remediate the problem. Ms. Jackson continued to request that the air conditioning be repaired and was repeatedly told that she was on the list and the repair would take place soon. Throughout the summer, Plaintiff repeatedly promised to have the air conditioner

repaired but failed to do so. In the early fall of 2019, Ms. Jackson discovered that her furnace did not work. She complained to Plaintiff that she had no heat in the apartment and was told that the repairs would be made. Ms. Jackson also discovered a water leak in her apartment and reported this to management. Ms. Jackson continued to report the defects to Plaintiff but Plaintiff has failed to remediate and repair the defects.

6. Plaintiff had a contractual duty and obligation to make repairs in order to maintain the apartment in a habitable condition. Plaintiff failed and refused to timely remediate the above stated defects.
7. As a direct result of Plaintiff's failure to undertake reasonable repairs and properly maintain the rental unit, Ms. Jackson was obliged and forced to live in an apartment that was not safe, sanitary, and fit for habitation.
8. Ms. Jackson relied on Plaintiff's representations that it would make repairs and as a result continued to pay her rent. Ms. Jackson only withheld rent when it became readily apparent that Plaintiff was unable or unwilling to make repairs.
9. Ms. Jackson is entitled to recover damages in an amount equal to the difference between the agreed rent and the actual fair rental value of the apartment during her occupancy and is entitled to forgo rent for any period that the landlord violated the implied warranty. Ms. Jackson also has been damaged by Plaintiff's acts and omissions by having to stay outside of the apartment, inability to cook in the apartment and increased food costs of eating at restaurants, costs of staying in other accommodations, costs of purchasing space heaters, the inability to utilize the apartment, inconvenience, aggravation, embarrassment, frustration, humiliation, and emotional distress.

WHEREFORE Ms. Jackson prays that this court enter judgment against Plaintiff awarding actual damages in an amount that is fair and reasonable, emotional distress damages, for interest at the statutory rate, taxing all costs of this action against Plaintiff, a reasonable attorney fee and such other and further relief as is just and proper.

Count II – Breach of the Covenant of Quiet Enjoyment

For Count II of her Counterclaim, Ms. Jackson incorporates the above paragraphs and states as follows:

10. Ms. Jackson's lease contained the implied covenant of quiet enjoyment.
11. Plaintiff's actions and omissions in failing to properly maintain the rental property and failure to remediate the defects listed above violated and breached the covenant of quiet enjoyment.
12. Ms. Jackson is entitled to recover damages as set out in paragraph 9.

WHEREFORE Ms. Jackson prays that this court enter judgment against Plaintiff awarding actual damages in an amount that is fair and reasonable, emotional distress damages, for interest at the statutory rate, taxing all costs of this action against Plaintiff, a reasonable attorney fee and such other and further relief as is just and proper.

Count III – Violation of the Missouri Merchandising Practices Act

For Count III of her Counterclaim, Ms. Jackson incorporates the above paragraphs and states as follows:

13. Plaintiff used and employed methods, acts and practices that are unlawful pursuant §407.020 RSMo; including:

- a. Failed to act in good faith to promptly and properly remediate and repair the defects in the rental property; and
 - b. Falsely promised and misrepresented to her that the necessary repairs would be made; and
 - c. Failed to maintain the apartment in a habitable condition as required by Missouri Common law; and
 - d. Failed to act in good faith by breaching the covenant of quiet enjoyment.
14. The conduct of defendant as alleged constituted multiple violations of the Missouri Merchandising Practices Act, R.S.Mo. Section 407.020, and the regulations for the implementation of the MMPA at 15 CSR Sections 60-7.010 et seq., 8.010 et seq., and 9.010 et seq.
15. Plaintiff's actions caused ascertainable loss of money and property to Ms. Jackson as set out in paragraph 9 above.
16. Plaintiff acted with an evil motive, intentionally and/or recklessly and otherwise showed complete indifference and conscious disregard of Ms. Jackson's legal rights and Missouri law. Punitive damages are warranted to ensure that the purposes of the MPA – to preserve fundamental honesty, fair play and right dealings in public transactions – are promoted and that violations not go unpunished or unremedied.
17. Pursuant to § 407.025 RSMo., Ms. Jackson is entitled to recover actual damages, punitive damages, reasonable attorney's fees, and equitable relief against Plaintiff.

WHEREFORE Ms. Jackson respectfully prays that the Court grant judgment for actual damages in an amount that is fair and reasonable; emotional distress damages; punitive damages; a reasonable attorney fee; costs and such other relief as the Court deems just.

Count IV – Breach of Contract

For Count IV of her Counterclaim, Ms. Jackson incorporates the above paragraphs and states as follows:

18. Plaintiff breached its lease by failing to repair and provide air conditioning and a working furnace and failure to fix the water leak in the apartment.

19. Ms. Jackson has been damaged by the breach.

WHEREFORE, Ms. Jackson respectfully requests that this court award her actual damages, consequential damages, her costs, attorney fees and such other relief this court deems just and proper in the circumstances.

/s/ Robert L. Swearingen

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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically served to all parties entered in this cause of action on January 28, 2020.

/s/ Robert L. Swearingen

Robert L. Swearingen