



# Representing Tenants in Eviction Actions

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# Overview

- Types of Eviction Actions
- Associate Circuit Court/Mechanics of the Action
- Common Defenses
- Trial/Post Trial
- Practical Considerations
- The Implied Warranty of Habitability
- The Merchandising Practices Act

# Types of Statutory Eviction Actions

- Rent and Possession, § 535 *et seq.* RSMo
- Unlawful Detainer, § 534 *et seq.* RSMo
- Expedited, § 441.70 *et seq.* RSMo
  
- Both Rent and Possession and Unlawful Detainer actions are statutorily assigned to Associate Circuit Court, Special Statute § 517 *et seq.* RSMo

# Rent and Possession

- § 535 *et seq.* RSMo -- Action for Rent and Possession
- Landlord's file rent and possession actions to evict a tenant who has failed to pay rent.
- If rent is owed, judgment is rendered for past-due rent owed **and** for restoration of possession of the property to the landlord.
- All cases tried in associate circuit court under summary rules.

# Unlawful Detainer

- § 534 *et seq.* RSMo -- Unlawful Detainer
- Statute process deals with holdover tenants/occupants
- A lawful Chapter 534 lawsuit always requires written demand to a tenant/occupant, before landlord files a lawsuit.

# Summary Procedure

- Landlord-Tenant Actions are Summary Proceedings
- It is not uncommon to have an initial call docket and a trial within two weeks to a month, or even the same day.
- However, tenants have the same rights as other civil litigants
  - Right to file Responsive Pleadings
  - Right to request a continuance
  - Right to Discovery

# Summons Date

- In the Missouri Circuit Courts for St. Louis County, St. Charles County, and Jefferson County, the general policy is that the summons date is not a trial date.
- In the Missouri Circuit Court for St. Louis City, the summons date may be the trial date:
  - (1) for pro se LLs and tenants, and
  - (2) for parties represented by counsel who agree to trial date.

# Responsive Pleadings

- In Associate Circuit Court, an unanswered petition is deemed denied.
- A Defendant's affirmative defenses and counterclaim(s) are due on the summons date because the summons date can be the trial date, § 517.051 RSMo.
  - If you cannot file these on summons date, you may file them later with leave of court, § 517.031 RSMo or by agreement of opposing attorney/party.
- A Defendant may file a counterclaim(s) in a R&P lawsuit, but cannot in an UD. Counterclaim is permissive, not mandatory. *Rahman v. Matador Villa Associates*, 821 S.W. 2d 102 (Mo. Banc 1991).

# Discovery

- If you represent a tenant in a Chapter 534 or 535 case, and you have served discovery requests on opposing party or attorney, then the matter usually will not be tried on the summons date.
- Defendants have the right to discovery: Mo. Sup. Ct. Rule 56.01 (a) and §517.071(3).
- Always complete at least a Document Request.

# Continuances

- Although a summary proceeding, a Defendant can request a continuance from the court. §517.071 RSMo
- Plaintiff's attorney may ask immediate trial date arguing that possession is at issue, however tenant's right to possession is **also** at issue.
- Defendant's attorney should argue right to time to prepare defense and do discovery. Mo. Sup. Ct. Rule 56.01.
  - If you agree to trial date, but it is before time when discovery is due (30 days from date of service), Defendant's attorney should have Plaintiff's attorney's agree in writing, to respond to at least a week, before the trial.

# Filing for Change of Judge

- If you ask for change of judge, the request must be made at least 5 days prior to trial date. §517.061 RSMo.
- The change of judge application must be approved by the court if application is timely filed before the trial date. *State ex rel. Couch v. Stovall-Reid*, 144 S.W.3d 895 (Mo.App. E.D. 2004).
- The change of judge application may be filed before any trial date, as long as timely filed 7 days before the trial date; There is no requirement that it be filed, before the first trial date. *Id.*

# Requesting a Jury Trial

- There is a clear right right to a jury trial in an unlawful detainer suit. §534.160 RSMo.
- Jury trial request must be made at least 5 business days prior to trial date. §517.091 RSMo.
- Right to jury trial in Chapter 535 rent & possession lawsuits per MO Supreme Court recent ruling in Brainchild Holdings LLC v Stephanie Cameron No. SC 96376 MO Supreme Court (Dec. 2017).

# Legal Defenses in Rent and Possession Actions

- Landlord has not stated a proper claim under § 535 RSMo. The petition must:
  - (i) describe the leased premises;
  - (ii) set out the terms of the rental agreement;
  - (iii) state the rent actually due;
  - (iv) allege that a demand for rent was made; and
  - (v) allege that tenant has not paid rent. § 535.020 RSMo.

# Legal Defenses in Rent and Possession Actions

- Landlord refused rent and put tenant in default, *Woycet v. Seacat*, 212 S.W. 449 (Mo. App. 1948).
- Plaintiff is not the real party in interest, *McClendon v. Leighty*, 320 S.W.2d 735 (Mo. App. 1959).

# Legal Defenses in Rent and Possession Actions

- Plaintiff is a corporation and cannot be represented by non-lawyer, *Stamatiou v. El Greco Studios*, 935 S.W.2d 701 (Mo. App. 1996).
- There is no landlord-tenant relationship, *Davis v. Bradford*, 308 S.W.2d 363 (Mo. App. 1957).
- Tenant has not made an attornment to purchaser of the leased property. *Goffstein v. Euge*, 388 S.W.2d 62 (Mo. App 1965).
  - If there is no attornment, purchaser may recover possession, but no rent money.

# Legal Defenses in Rent and Possession Actions

- Landlord has not sued for actual rent due. § 535.020 RSMo (see *Emert v. Waldman*, 186 S.W. 42 (Mo.App. 1945); *Mannion v. Khan*, 992 S.W. 2d 198 (Mo.App. E.D. 1999)).
- In a R&P suit, landlord may join claims for other monies allegedly due, such as late fees & attorneys' fees (if lease contract allows for same). Landlord cannot lump together all monies claimed and call it “rent.”
- A landlord **may not** sue/recover for property damages in a R&P suit.

# Legal Defenses in Rent and Possession Actions

- Even if lease contract makes something not rent “rent,” it still is **not** rent for purposes of § 535.020 RSMo.
- *Welch v. Ashby*, 88 Mo.App. 400 (1901). “That which is not rent cannot be made rent even by the agreement of the parties.”

# Legal Defenses in Rent and Possession Actions

- A tenant can tender rent and court costs on the date of the trial and defeat the rent and possession action. §535.160 RSMo.
- Similarly, if a money judgment is entered but is not for rent due, the Court should not issue a judgment for possession. §535.020 RSMo.

# Asserting Affirmative Defenses in Rent and Possession Actions

- Breach of implied warranty of habitability. *King v. Moorehead*, 495 S.W. 2d 65 (Mo.App. 1983); *Detling v. Edelbrock*, 671 S.W.2d 265 (Mo. Banc 1984).
  - Assurance a home will be safe and sanitary
- Breach of the covenant of quiet enjoyment.
- Breach of the lease (if expressed provision regarding LL duty to repair).
- Constructive eviction.

# Asserting Counterclaims in Rent and Possession Actions

- Breach of the implied warranty of habitability.
- Breach of contract.
- Personal property damage.
- Personal injury (tort claim) permissible, not compulsory, *Rahman v. Matador Villa Associates*, 821 S.W.2d 102 (Mo. 1991).
- Suit under Chapter 534 for forcible entry, trespass, conversion.
- Chapter 407 Merchandising Practices Act Claim.

# Legal Defenses in Unlawful Detainer Actions

- Determine which of the four classes of “unlawful detainer” lies. §534.030 RSMo.
- **(1) Holdover tenant.** *Bess v. Griffin*, 234 S.W.2d 978, 982 (Mo.App. 1950); *Watkins v. Wattle*, 558 S.W.2d 705, 712 (Mo.App. 1977).
  - Holdover at end or expiration of lease term, then no demand from landlord for possession is necessary.
  - Written demand is essential if termination of month-to-month tenancy.
  - Written demand necessary if termination is mid-term.
  - Landlord tenant relationship necessary.

# Legal Defenses in Unlawful Detainer Actions

- **(2) Hold-over employees**
- **(3) Intruders**
  - An entry that is wrongful, but not forcible upon the actual possession of another. (i.e. squatters)
  - The landlord-tenant relationship is unnecessary, but a written demand for possession prior to the action is necessary.
- **(4) Suit filed by new owner after a foreclosure sale and notice of sale.**
  - no landlord/tenant relationship necessary, but defendant must be given notice.

# Legal Defenses in Unlawful Detainer Actions

- Landlord must give timely written notice to vacate.
  - 30 days prior to next rent due date for month-to-month lease, §441.060 RSMo
  - 60 days from next rent due date year-to-year, §441.050 RSM;
  - 10 days for breach of lease and midterm termination, §441.040 RSMo

# Legal Defenses in Unlawful Detainer Actions

- Potential Deficient Notice Defenses:
  - Cite to 441.040 to 441.060 RSMo when there is no/improper notice.
  - *St. Louis Housing Authority v. Thompson*, 657 S.W.2d 390 (Mo. App. 1983).
    - Bare recitations of lease provisions do not inform a defendant of specific actions or omissions, so termination is improper.
    - If the lease is not lawfully terminated, no unlawful detainer action may lie.

# Legal Defenses in Unlawful Detainer Actions

- Potential Deficient Notice Defenses:
  - *Fisher v. Payton*, 219 S.W.2d 293 (Mo. Ct. App. 1949). Written notice of lease termination is a condition precedent to recovery in an unlawful detainer (unless suit filed after expiration of lease term for fixed time).
  - *McIlvain v. Kavorinos*, 202 S.W.2d 103, 105 (Mo.App. 1947). Tenant is entitled to a full month's notice after succeeding rent day.
  - Termination notice must be absolute in its terms. Conditional notice is not absolute notice.

# Legal Defenses in Unlawful Detainer Actions

- Fair Housing Act:
  - Landlord's decision to terminate shall not be based on illegal discrimination.
  - Potential defense based on violation of Fair Housing Act, 42 U.S.C. §§ 3604, et seq., and § 213.105 RSMo.
- There is no right to counterclaims in a suit under § 534.030, but affirmative defenses are permissible. Lake in the *Woods v. Carson*, 651 S.W.2d 556 (Mo.App. 1983)
  - To challenge title/rightful ownership in UD cases (primarily concerning foreclosure actions) an occupant must bring either an equity suit or a post-UD wrongful foreclosure action. *Wells Fargo Bank, N.A. v Smith*, 392 S.W.3d 446 (Mo. 2013)

# Practical Considerations in Representing Tenants

- Discovery is expedited at its best, and sometimes not allowed by the court. It's very important to work with your client:
  - Copy of Lease
  - Copy of Receipts
  - Copy of any pictures, notices, letters
  - Text messages and pictures on phones are admissible in Missouri Courts. *State v. Harris*, 358 S.W. 3d 172 (Mo. App. E.D. 2011)
- When meeting with clients try to establish a timeline of the issues, motives behind the landlord's behavior, and what the client wants to do.

# Practical Considerations in Representing Tenants

- Attempt to work out a settlement agreement
- Repayment Agreement
- MO Supreme Court Administrative Rule 17
- Move-out agreement with time
- Reasonable Accommodation for clients with disabilities

# Post-Trial Remedies

- The Missouri General Assembly abolished the right to a Trial De Novo effective August 28, 2014.
- Appeals are now the same as any appeal of a state case.
- Notice of appeal must be filed within 10 days of the date the judgment becomes final. See Rule 81.04 (a)
- Either party may file a Motion to Reconsideration.
  - There is technically no rule for a Motion to Reconsider, instead phrase as a Motion to Amend the judgment under Rule 78.01, *et. seq.*
  - Benefits the party by tolling the clock on the finality of the judgment.

# Execution of Judgment By Landlord

- **Pay and stay:** A tenant can tender rent and court costs on the date of the trial and defeat the rent and possession action. §535.160 RSMo
- In both rent and possession unlawful detainer actions, the plaintiff/landlord can request execution of the judgment within on 10 days of the date of judgment.

# Questions

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