

**IN THE 16TH CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY
ASSOCIATE CIRCUIT DIVISION**

_____ ,)	
)	
Landlord/Plaintiff,)	
)	Case No. _____
vs.)	Division No. ____
)	
_____ ,)	
)	
Tenant/Defendant.)	

AFFIRMATIVE DEFENSES AND COUNTERCLAIM

**PURSUANT TO 517.031, DEFENDANT FILES NO ANSWER, DEEMING ALL ALLEGATIONS DENIED*

MOTION FOR LEAVE

This pleading is timely filed pursuant to *Neenan v. Cox*, 955 S.W.2d 595 (Mo. App. W.D. 1997), which ruled that counterclaims are timely so long as they are filed before the return date of the summons *as continued*. (Emphasis added). Should there be any dispute about timeliness, the Defendant also seeks leave to file Defendant's Affirmative Defenses and Counterclaim pursuant to 517.031 RSMo.

AFFIRMATIVE DEFENSES

Defendant prays for the dismissal of Plaintiff's claims based on the following affirmative defenses:

SET-OFF

1. In his suit against Defendant, Landlord demands payment for back-rent.
2. Should the Court find any rent to be due and owing, Defendant's damages, arising from the claims set forth below, should be set-off against the amount deemed to be owed.

BREACH OF THE WARRANTY OF HABITABILITY

3. The Plaintiff violated the warranty of habitability in that the condition of the home affected Defendant's life, health or safety and rendered the home uninhabitable in that:

- | | |
|---|------------------------------------|
| ___ the home is infested with bugs or vermin. | ___ there is inadequate or no heat |
| ___ electrical problems make the home unsafe. | ___ other: |
| ___ the home had dangerous structural issues. | |
| ___ the home has standing water or sewage. | |
| ___ the plumbing is not in working order | |

4. The Defendant notified Plaintiff of the defects above on or around the following date(s):

5. Plaintiff failed to make the repairs in a reasonable amount of time.

6. Based on the reasoning set forth in *Kohner Properties, Inc. v. Johnson*, 553 S.W.3d 280 (Mo. 2018), Plaintiff's breach of the warranty of habitability provides a defense for non-payment of rent.

WHEREFORE, Defendant prays that the Plaintiff's Petition be dismissed with prejudice.

**COUNTERCLAIM
WARRANTY OF HABITABILITY**

Defendant incorporates all preceding paragraphs and states:

7. As set forth above, the Plaintiff violated the warranty of habitability.

8. As such, the Defendant seeks compensation for the rent paid during the period the home was uninhabitable as well as:

___ out of pocket expenses.

___ punitive damages due to Landlord's outrageous conduct.

WHEREFORE, Defendant prays for judgment and damages, and for such other relief as the Court deems proper.

Respectfully submitted,

Tenant Signature (pro se)

Tenant address

Tenant phone number

Tenant Email

CERTIFICATE OF SERVICE

I certify that on _____ (date), I provided a copy of this document Landlord by:

_____ emailing Landlord at this address _____

_____ hand delivery to Landlord at this address: _____

_____ mail to Landlord at this address: _____

_____ fax to Landlord at this number: _____

Defendant signature (acting *pro se*)