THE SUPREME COURT OF MISSOURI

No. SC95944

KOHNER PROPERTIES, INC.
Plaintiff/Respondent,

v.

LATASHA JOHNSON,
Defendant/Appellant.

On Appeal from the Circuit Court of St. Louis County
Case No. 15SL-AC07852

On Transfer from the Missouri Court of Appeals, Eastern District
Case No. ED103133

BRIEF OF LEGAL AID OF WESTERN MISSOURI, LEGAL SERVICES OF SOUTHERN MISSOURI, AND MID-MISSOURI LEGAL SERVICES AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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ATTORNEYS FOR *AMICI CURIAE*

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Mid-Missouri Legal Services ("MMLS"), Legal Aid of Western Missouri ("LAWMO"), and Legal Services of Southern Missouri ("LSSM"), along with Appellant's counsel, Legal Services of Eastern Missouri ("LSEM") are the primary sources of civil legal services for low-income individuals in Missouri. Every day, the four programs work with tenants facing eviction or uninhabitable housing. MMLS, LAWMO, and LSSM are interested in this case because the Court's decision will potentially restrict the ability of Missouri tenants to assert affirmative defenses and counterclaims regarding dangerous and unsanitary housing conditions in response to landlords' Rent and Possession actions.

Tenants already face an uphill battle in defending themselves in court, and this case threatens to take away the key tool in a tenant's ability to combat inadequate housing conditions. If the trial court's decision stands, tenants would have little, if any, chance to assert their rights against landlords who refuse to provide safe, secure, and sanitary rental properties.

The low-income individuals represented by MMLS, LAWMO, and LSSM will be most affected by the Court's decision. As *amici*, we respectfully request the Court to consider the following concerns in light of the experiences and observations of our clients and attorneys. We accordingly urge the Court to follow the Court of Appeals' lead and reverse the trial court's ruling prohibiting Appellant Latasha Johnson from asserting an affirmative defense or counterclaim of a breach of the implied warranty of habitability in Respondent's rent and

possession action because Ms. Johnson failed to deposit alleged outstanding rent *in custodia legis*.

JURISDICTIONAL STATEMENT

We adopt and incorporate by reference the Jurisdictional Statement set forth in Appellant's brief.

STATEMENT OF FACTS

We adopt and incorporate by reference the Statement of Facts set forth in Appellant's brief.

POINT RELIED ON

The trial court erred in awarding judgment to Respondent because it inappropriately barred Appellant from asserting her affirmative defense or counterclaim based on the implied warranty of habitability in that Missouri law does not require tenants to pay withheld rent into the court *in custodia legis*.

MO. CONST. art. I, § 14.

King v. Moorehead, 495 S.W.2d 65 (1973)

Detling v. Edelbrock, 671 S.W.2d 265 (1984)

ARGUMENT

For nearly fifty years, residential rental properties in Missouri have been covered by the implied warranty of habitability to ensure Missouri renters have the very basics when it comes to where they are living, including a minimum standard of health, safety, and sanitation. Longstanding judicial precedent guarantees that when a landlord fails to meet these basic housing standards, tenants are able to raise defenses and file claims against the offending landlord. The Missouri Court of Appeals for the Eastern District correctly found Missouri law does not require a tenant to escrow money into the court in order to raise the implied warranty of habitability as a defense or counterclaim to a landlord's Rent and Possession claim. This Court now has the opportunity to protect all tenants, specifically those struggling to make ends meet every day, by ensuring equal access to the courts and ensuring the implied warranty of habitability is able to serve its critical purpose.

A. The Implied Warranty of Habitability is Only Able to Meet its Goal of Preserving and Maintaining an Adequate Supply of Habitable Dwellings if Tenants are Able to Effectively Raise Defenses in Eviction Actions

The Metropolitan St. Louis Equal Housing & Opportunity Council and Washington University School of Law Civil Rights & Community Justice Clinic put it best in the Brief of *Amici Curiae*: "The imposition of an escrow requirement is, at it's core, a judicially created attempt to balance a landlord's interest in securing adequate payment for his property and a tenant's interest in living in a

habitable property."[1] Tenants already face incredibly high hurdles in defending themselves against eviction. In fact, in the City of St. Louis, only two tenants were able to obtain judgments against landlords in cases filed in 2012. *Id*. It is impossible to believe none of the other 5,416 tenants facing an action in rent and possession did not have valid defenses. In reality, the St. Louis City trial court's escrow requirement contributed to the tenants' inability to defend themselves against landlord's wrongful claims.

Compare the results of St. Louis City to other Missouri courts that do not demand payment be deposited into the court before a claim is made. Since 2011, legal aid lawyers have successfully defended tenants from claims for unpaid rent as a result of showing the rental property failed to meet minimum habitability standards – without depositing rent money in escrow.

One such tenant, Tanya Keel,[2] rented a small home in Boone County in September 2011. Shortly after moving in she discovered mold throughout the home. Rather than remedy the root of the problem, her landlord simply painted over the mold, and it continued to spread. In November 2011, after repeated requests and subsequent failures to make repairs, Ms. Keel decided to withhold her

[1] Brief of the Metropolitan St. Louis Equal Housing and Opportunity Council and Washington University School of Law Civil Rights and Community Justice Clinic as *Amici Curiae* in Support of Appellant at 9, Johnson v. Kohner Properties, ED103133, 2016 WL 4760904.

[2] *DRD Management Inc. v. Tanya Keel*, 11BA-CV05458, (Mo. Cir. 2012).

rent and attempt repairs herself. As a result, her landlord sued her in Rent and Possession. Unable to deposit the rent money, Ms. Keel brought affirmative defenses and counterclaims for breach of the implied warranty of habitability – claims which resulted in the case quickly settling amicably.

Tanya Keel's story is only one such example of a positive outcome for a tenant facing uninhabitable conditions. Tenants such as Tabatha Hicks-Watson[3] and Clyde Benson[4] also faced homes unsafe for them and their children. Both withheld rent after continued unresponsiveness from their landlords, and both ended up being sued in Rent and Possession. They could not, and did not, deposit their rent money as they spent it trying to keep their families safe in the face of deteriorating conditions in their rental properties. However, both were able to raise defenses and counterclaims for breach of the implied warranty of habitability; they therefore avoided paying rent to landlords who neglected their duties to provide safe, secure and sanitary rental homes.

Lastly, in February 2015, Jakia Lakes[5] discovered bedbugs in her rental property in Boone County. She quickly learned other tenants in her building

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[3] *DRD Property Management, Inc. v. Tabatha Hicks-Watson*, 13BA-CV02957 (Mo. Cir. 2013).

[4] *Midwest Columbia Properties, LLC v. Clyde Benson*, 14BA-CV02826 (Mo. Cir. 2014).

[5] *Christine Braudis v. Jakia Lakes*, 15BA-CV02187 (Mo. Cir. 2015).

previously had an infestation, and the bedbugs spread after the landlord failed to send an exterminator to the apartment building. Despite sending two letters and countless phone calls, her landlord refused to acknowledge the problem or otherwise help in eradicating the damaging pests, resulting in Lakes using her rent money in an attempt to eliminate the bedbug problem, unsuccessfully, herself. After being sued in Rent and Possession, Lakes responded with an affirmative defense and counterclaim for breach of the implied warranty of habitability before ultimately vacating the rental property weeks later with the help of local social service organizations.

Lakes ultimately prevailed in a contested trial against the landlord, and thereby avoided any rental obligation after she first made the landlord aware of her building's bedbug infestation. The trial court also awarded her over $5,000 in damages for the lost personal property she had to discard due to the bedbug infestation. If the Boone County Circuit Court required Lakes to deposit her rental money, she would never have been able to raise her defense or counterclaim, and the landlord likely would have obtained a judgment for months of undeserved rent, late fees, and attorney fees.

There are similar stories across Missouri of tenants facing eviction as a result of withholding their rent after a landlord fails to make needed repairs to make a rental property habitable. An escrow requirement would only embolden landlords to continue to shirk their duties to provide habitable rental properties and ensure tenants like Tanya, Tabatha, Clyde and Jakia never have their day in court.

B. Requiring Tenants to Escrow Rental Payments Violates their Constitutional Rights, Precludes Access to Safe Housing, and Produces Unequal Access to Justice

Across Missouri, jurisdictions inconsistently impose escrow payment requirements on tenants in defending rent and possession actions. In both the St. Louis metropolitan area and Jackson County, judges are likely to require tenants to pay any withheld rent into escrow before raising the breach of the implied warranty of habitability as a counterclaim or an affirmative defense. In Boone County, however, there is no such requirement, and tenants routinely raise such issues without making escrow payments. In southern Missouri, the standard varies, with southwest Missouri courts generally requiring escrow payments, and southeast Missouri courts not requiring deposits.

Any requirement tenants deposit withheld and future rent into escrow violates their constitutional right of access to open courts. Moreover, this arbitrary and unreasonable restriction deters many Missouri tenants from obtaining safe and habitable housing and precludes equal access to justice for all Missourians. This Court should hold that tenants are not required to deposit withheld rent *in custodia legis* in order to defend their rights in court.

1. An *In Custodia Legis* Requirement Violates Article I, Section XIV of the Missouri Constitution

Requiring Missouri tenants to deposit unpaid rent into court-held escrow violates the Missouri Constitution because it infringes upon an individuals' rights to access the Missouri judicial system. The Missouri Constitution provides "[t]hat

the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property, or character, and that right and justice shall be administered without sale, denial, or delay." MO. CONST. art. I, § 14. An "open courts" violation occurs when 1) a party has a recognized cause of action, 2) the cause of action is being restricted, and 3) the restriction is "arbitrary or unreasonable." *Weigand v. Edwards*, 296 S.W.3d 453, 461 (Mo. banc. 2009) (internal quotation omitted).

The breach of the implied warranty of habitability is a recognized counterclaim under Missouri law. *Moser v. Cline*, 214 S.W.3d 390, 394 (Mo. App. W.D. 2007) (abrogated on other grounds by *Kolb v. DeVille I Properties, LLC*, 326 S.W.3d 896 (Mo. App. W.D. 2010)). Moreover, tenants may use breach of implied warranty of habitability as an affirmative defense in rent and possession actions. *Id*. The rule that some courts impose upon Missouri tenants requiring withheld rent be paid *in cusodia legis* is a barrier to raising the issue of breach of implied warranty of habitability as either a counterclaim or affirmative defense because it creates a financial test of the tenant in order to bring a claim. If the tenant does not, or cannot, make the payment, they are effectively barred from raising legitimate claims in court.

Further, the escrow restriction is both arbitrary and unreasonable. This arbitrary standard produces different rules across the state based on nothing more than geographical location. A tenant in St. Louis or Kansas City will most likely be required to pay withheld rent into an escrow account, while a resident in

Columbia would not be subject to such a requirement. Moreover, the escrow requirement is unreasonable because it creates an unequal playing field in every landlord-tenant action. A tenant in a jurisdiction which requires escrow rent payments would be required to pay significant sums of money into the court before the claim is adjudicated, while the landlord in the action would never be subject to an advanced payment of possible damages. It is also unreasonable because, as explained below, it unfairly imposes substantial barriers on a tenant's ability to secure safe housing and defend herself court.

2. The Escrow Payment Requirement Unfairly Imposes Barriers that Deter Tenants from Securing Safe Housing and Preclude Equal Access to Justice

The current state of Missouri law precludes equal access to justice for Missourians and prevents tenants from securing safe and habitable housing. Tenants residing in counties that require escrow payments face impossible legal and practical barriers their counterparts in counties without such requirements do not. First, tenants are inevitably at a disadvantage in landlord-tenant disputes due to a lack of economic and legal resources. Most tenants represent themselves *pro se* and have limited resources to defend themselves against a better-positioned landlord. For many, it is virtually impossible to learn about any particular court's escrow requirements, and even if they are made aware, they may not know how or where these payments must be made.

Moreover, the escrow requirement imposes significant barriers on tenants in court and in their personal lives. When required to pay withheld rent into

escrow, even tenants living in averagely-priced homes and earning average wages would experience significant difficulty in affording what essentially is double rent payments. Low-income tenants must confront even bigger struggles, facing virtually insurmountable hurdles in seeking alternative homes while still affording basic necessities. Further, regardless of the economic status of the renter, the escrow requirement hinders anyone who seeks to challenge their landlord's transgressions in court. The escrow requirement unduly deters tenants from seeking safe and habitable housing and securing adequate justice under the law.

The devastating implications that the escrow payment requirement has on Missouri tenants, particularly low-income renters, may be demonstrated by comparing two individuals in nearly identical predicaments: a Cole County tenant[6] and a St. Louis tenant.[7] Suppose the Cole County renter has an apartment that is uninhabitable and her landlord refuses to take remedial action. After months of the tenant requesting repairs and the landlord refusing to take action, the landlord is

[6] The Cole County fair market rate of a two-bedroom apartment is $630 per month. A renter would have to work forty-eight hours per week at the area average renter wage of $10.21 per hour to afford this apartment.

[7] The fair market rate of a two-bedroom apartment in the St. Louis metropolitan area is $840 per month. A resident working at the average hourly renter wage of $14.73 would have to work forty-four hours per week to avoid spending more than thirty percent of her income on rent.

now likely in breach of contract and the implied warranty of habitability. The tenant, facing substandard housing, uses her monthly rent to combat the deteriorating condition. The tenant is ultimately sued in Rent and Possession. However, she would be free to raise, as an affirmative defense and counterclaim, her landlord's breach of the implied warranty of habitability. Moreover, she would be free from the restraints of living in an unsafe or uninhabitable home.

A renter in identical circumstances in St. Louis, meanwhile, would be required to pay rent on the uninhabitable unit *in custodia legis* if she wishes to raise the same defense and counterclaim. Such a requirement imposes significant hardship on the tenant. If the tenant hoped to find safer, habitable housing, she would potentially have to pay double rent – rent to her current landlord into the court while she remained in possession, and rent or security deposit owed to a new landlord to vacate her old home and relocate to alternative housing. To afford this, the tenant can either significantly increase the number of hours she is working per week or spend an even higher percentage of her income on housing, an incredibly economically unsafe option.

These nearly identical but contrasting situations demonstrate the substantial hardship that results from the *in custodia legis* payment requirement for Missourians earning mean incomes and living in apartments charging the fair market rate. For low-income tenants, the effects are even worse. If an individual earning average wages cannot afford to make *in custodia legis* rent payments, for tenants earning significantly less per hour, affording these payments is essentially

economically impossible. A tenant will not be able to justify paying rent into the court or saving or tendering money to a new landlord to relocate into a habitable home when she also needs to pay for the tenant food, toiletries, and basic living necessities for her and her family. No tenant should be forced to choose between feeding their family and securing a habitable home. For many tenants, this rent requirement is simply insurmountable.

These examples are a microcosm of statewide disparities that impact not only tenants' ability to simply live in a habitable home, but also their ability to seek justice. The *in custodia legis* rent payment requirement precludes equal access to justice by requiring the St. Louis tenant to meet additional legal thresholds that the Cole County resident must not meet. Upon failing to make the *in custodia legis* payment, whether due to unawareness of the requirement or economic infeasibility, the St. Louis tenant's claims will be barred, nullifying her right to seek justice in court.

The significance of this impediment cannot be understated. Our three legal aid programs have seen firsthand the widespread crisis that is Missouri's uninhabitable housing market as our experiences indicate the number of unsafe properties in Missouri has risen steadily since the Great Recession, as has the number of tenants forced to inhabit these homes out of necessity. These uninhabitable properties include homes without running water or heating or cooling equipment. Some residences have extreme flooding and sewer backup problems, which are often left undiscovered until a heavy rain. A tenant faced with

such severe housing issues and an unresponsive landlord may either continue to live in harsh and/or repugnant conditions or seek alternative housing. A tenant required to pay withheld rent in escrow, however, would face possibly impassable barriers in finding a safe place to live.

Missourians should not be placed at such a disadvantage, both in the courtroom and at home, solely due to their geographical location within the state and Missouri's inconsistent application of an escrow "requirement". But it is insufficient to merely call for a uniform application of the law. Vulnerable, low-income tenants live in every county in the state, and to require *in custodia legis* payments statewide would harm an already economically- and legally-disadvantaged group. To protect Missouri's most vulnerable tenants, the Court should clarify that *in custodia legis* payments are not required under Missouri law.

C. Requiring tenants to deposit rent money into an escrow account with the court as a condition precedent to a claim for breach of the implied warranty of inhabitability renders the policy for such a claim meaningless, because it impedes low-income tenants from bringing claims and incentivizes landlords to ignore dangerous housing conditions.

The implied warranty of habitability in residential leases came to Missouri in 1973 as a "much needed remedy for [the] tenant of substandard housing." *Implied Warranty of Habitability in Residential Lease, King v. Moorehead, 495 S.W.2d 65 (Mo. App. 1973)*, 1973 Wash. U. L. Q. 949, 952 (1973). In *King* v. *Moorehead*, 495 *S.W.2d 65, 75 (Mo. App. 1973)*, the Missouri Court of Appeals for the Western District held that all residential leases contained an implied

warranty that "the dwelling is habitable and fit for living at the inception of the term and that will remain so during the entire term."

Rejecting the common law rule of *caveat emptor*, the court found that such a lease gave rise to a contractual relationship between the landlord and tenant. *Id.* The court justified such a conclusion based on several policy arguments, including: (1) "the contemporary housing shortage and resultant inequality in bargaining power between the landlord and tenant," and (2) "the common experience that the landlord has superior knowledge of the condition of the premises . . . ." *Id.* at 71. In so concluding, the court decided a residential tenant receives consumer protections. *Id.* at 71-72.

Eleven years after *King*, the Supreme Court of Missouri recognized the implied warranty of habitability in residential leases in *Detling v. Edelbrock*. 671 S.W.2d 265 (Mo. banc 1984). Relying on the policy rationales in *King*, the Court found "a landlord impliedly warrants the habitability of [the] leased residential property." *Id.* at 270. A tenant, therefore, could use the breach of implied warranty as an affirmative defense to a landlord's rent and possession suit, or a breach could serve as the basis for a suit against the landlord. *Id.* Notably, the Court did not require a tenant to provide the rent in escrow as a condition for bringing such a claim. *See generally Id.*

The trial court's decision in the instant case renders the policy behind *King* and *Detling* meaningless. The purpose of creating an implied warranty of habitability was to ensure the health and safety of tenants in their homes. Yet,

requiring tenants to pay rent into escrow in order to bring a breach of implied warranty claim creates a result where tenants must rely on the options the court of appeals rejected in *King*: tenants must either "continue to pay rent and endure the conditions of untenatability" or vacate the premises. *King*, 495 S.W.2d at 77.

Under the trial court's interpretation of *King*, a low-income tenant would face two significant hurdles to moving into another rental unit. First, it is almost impossible for a low-income tenant to afford double rent (rent into escrow and rent to their new landlord) in addition to the security deposit to stay in possession while paying a new landlord to relocate. The Missouri fair market rent, as demonstrated below in Table 1, is distinctly incompatible with tenants' ability to pay affordable rent.

Table 1: Wage and Affordable Rent for Low Income Households

	Wage	**Affordable Rent**
Minimum Wage Worker	$7.65	$398
Average Renter Wage	$12.74	$662
2-Bedroom Housing Wage[8]	$14.98	$779

NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH 2016: MISSOURI (2016).

[8] The 2-Bedroom Housing wage represents the wage a Missouri renter would be required to make in order to afford a 2-bedroom rental unit. The fair market rent is $779.

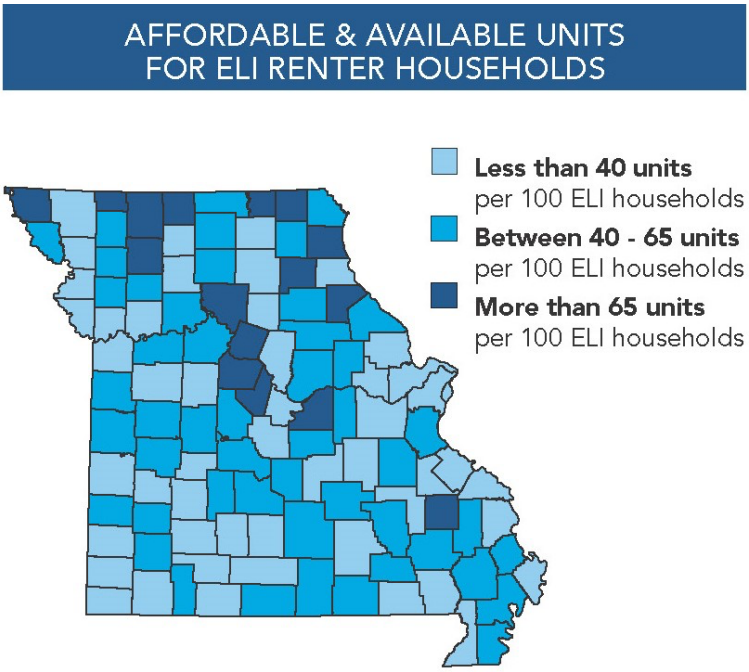
Significantly, the gap between low-income tenants and the fair market value results in over twenty-three percent of Missouri tenant's paying more than fifty percent of their total income on housing. MISSOURI ASSOCIATION FOR COMMUNITY ACTION, 2016 STATE OF THE STATE: POVERTY IN MISSOURI (2016). Notably, renters are considered "cost burdened" if more than thirty percent of their income is applied to housing expenses. *Id.*

Even if a low-income tenant could afford to pay rent and the cost of relocation, the affordable housing shortage makes it less likely a tenant will find a suitable place to live. The United States is experiencing a "significant shortage" in affordable rental housing for extremely low-income households. NATIONAL LOW INCOME HOUSING COALITION, THE GAP: THE AFFORDABLE HOUSING GAP ANALYSIS 2016 (2016). Extremely low-income ("ELI") renters, about one in four Missourians, face an especially difficult hurdle in finding affordable housing. NATIONAL LOW INCOME HOUSING COALITION, 2016 STATE HOUSING PROFILE: MISSOURI (2016).

An ELI renter is defined as one that makes an income at thirty percent or less of the area median income, with a state maximum set at $18,360. *Id.* On average, across Missouri, less than 40 units per 100 renters are affordable and available to ELI renters, creating a shortage of 126,374 units. *Id.* The National Low Income Housing Coalition chart, Table 2 below, illustrates the lack of available, affordable units throughout Missouri. Notably, eight of the top ten most populous counties, including St. Louis County, Jackson County, St. Charles

County, Greene County, and Clay County, have less than 40 units available per 100 ELI households.[9]

Table 2: Affordable & Available Unit for ELI Renters by County



Source: NLIHC tabulations of 2008-2012 Comprehensive Housing Affordability Strategy (CHAS) data.

Id.

While tenants facing substandard conditions almost always desire to move, the inability to pay rent and the cost of relocation and the housing shortage

[9] The other counties include Boone County, Jasper County, and Franklin County. All eight counties have a population over 100,000 people. Census information provided by *Missouri Counties by Population*, MISSOURI DEMOGRAPHICS, http://www[.]missouri-demographics.com/counties_by_population (last visited Oct. 14, 2016).

preclude this outcome. Frequently, low-income tenants are understandably apprehensive of entering into a second lease while the status of their current lease is unclear. The alternative is for the tenant to remain in the inadequate home. The renter must continue to pay rent on a unit that poses a danger to her health and safety, while the landlord shirks his duty to repair the housing violations. Either of these outcomes are policies that Missouri should not and cannot adopt without rendering the implied warranty of habitability meaningless.

Further, a mandatory escrow condition for tenants to bring a breach of implied warranty claim also results in an incentive for landlords not to make repairs on housing code violations. By conditioning a tenant's claim or affirmative defense on the ability to pay rent money into court, most tenants will be prevented from contesting the landlord's claims because they cannot bear the costs associated with bringing such an action. A landlord is therefore less likely to make repairs to the tenant's home because he knows the tenant cannot afford to bring an action against him/her.

A majority of scenarios will play out similarly: a tenant will request repairs to the property, the landlord will refuse to do so, and the tenant will attempt to remediate the inhabitability on their own. Subsequently, the landlord will be able to file a rent and possession claim against the tenant for failure to pay rent. The tenant, no longer having the rent money, will be barred from bringing a breach of implied warranty defense. The landlord will therefore unjustly recover rent from the tenant, while the tenant recovers nothing for the landlord's inaction. This result

does not ensure the health and safety of Missouri's tenants, and renders the implied warranty of habitability meaningless.

As detailed above, an escrow requirement precludes low-income tenants from bringing a breach of implied warranty of habitability claim and incentivizes landlords to neglect housing violations. This is not a favorable or acceptable policy. Therefore, this Court should reverse the trial court and find that tenants can bring a claim for the breach of implied warranty of habitability without depositing rent *in custodia legis*.

Conclusion

MMLS, LAWMO, and LSSM urge the Court to uphold the decision of the Missouri Court of Appeals of the Eastern District in reversing the trial court's decision barring Appellant from raising her affirmative defense and counterclaim of a breach of the implied warranty of habitability. The *amici* also implore this Court to remand the instant case to the trial court to allow Appellant, and all other tenants in Missouri, to raise the implied warranty of habitability as a defense to Rent and Possession claims without the need to deposit rent in escrow.

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ATTORNEYS FOR *AMICI CURIAE*

AFFIDAVIT AND CERTIFICATE OF SERVICE

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

COMES NOW Michael T. Carney, Attorney for *Amici Curiae*, being of lawful age and duly sworn on his oath, and states as follows:

1. To the best of my knowledge, this appeal is not presented or maintained for any improper purpose; the claims, defenses and legal contentions contained in the brief are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; the allegations and factual contentions have evidentiary support; and any denials of factual contentions are warranted by the evidence.

2. This brief complies with the limitations contained in Rule 84.06(b) of the Missouri Rules of Civil Procedure.

3. This brief contains 4,404 words, exclusive of the table of contents and table of authorities.

4. On Monday, October 24, 2016, a true and correct copy of the foregoing document was served upon the Clerk of the Court and upon all counsel of record via the Missouri e-filing system.

5. The electronic copy has been scanned for viruses and is virus-free.

Michael T. Carney

Subscribed and sworn to before me, a Notary Public, this 24th day of October, 2016.

Notary Public

My commission expires: 11-4-2019

LINDA PETERS WOHLEBER
Notary Public - Notary Seal
State of Missouri
Boone County
My commission expires on November 4, 2019
Commission #05406556