OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

J&M SECURITIES, LLC,	)	No. ED109593
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	Honorable John R. Lasater
NIKKI M. KENNEDY,	)	
	)	
Respondent.	)	Filed: December 28, 2021

J&M Securities ("Appellant" or "J&M"), as assignee of The Century Group, Inc. ("Century"), filed suit against Nikki Kennedy ("Kennedy") in the Circuit Court of St. Louis County to recover certain amounts allegedly owed to it pursuant to the residential lease agreement entered into by and between Century and Kennedy, which agreement Century had assigned to J&M for collection purposes only. In her answer to the Petition, Kennedy generally denied any liability to Century, and asserted a counterclaim for breach of the warranty of habitability, failure to return her security deposit, and set-off; Kennedy also asserted a similar affirmative defense of set-off. Although the circuit court found that Kennedy owed certain amounts to J&M for terminating the lease early, the circuit court also found that J&M owed a slightly greater amount to Kennedy pursuant to her set-off affirmative defense and counterclaim, and thus entered a money judgment in favor of Kennedy. J&M appeals the portion of the money judgment entered against it and in favor of Kennedy, but does not appeal the other parts of the circuit court's judgment.

J&M raises three points on appeal relating to the money judgment entered against it. In its first point, J&M argues that the circuit court erroneously declared the law in entering a money judgment against it in that Missouri law does not allow recovery against the assignee of a lease agreement for a claim of overpayment to the assignor of the lease agreement. In its second point, J&M argues that the circuit court erroneously applied the law in entering the money judgment against it for the same reason asserted in its first point. In its third point, J&M argues that the circuit court's money judgment against it was not supported by substantial evidence of any overpayment by Kennedy to J&M or any other transaction with J&M, which J&M maintains is necessary in order for a money judgment to be entered against an assignee in this situation.

REVERSED AND REMANDED.

DIVISION ONE HOLDS: This case appears to be a matter of first impression in Missouri, to wit:
Whether a money judgment can be entered in favor of a tenant and against the assignee of a landlord, for collection purposes only, involving an ordinary residential lease agreement where the tenant has made an overpayment to the landlord/assignor, but the tenant has neither made any payment to nor entered into any transaction with the collection assignee.

Under long-standing Missouri precedent, in an action by an assignee, a claim in favor of the defendant against the assignor can be allowed as a set-off, counterclaim, or reconvention, but only to the extent of the claim sued upon, and thus, a judgment cannot be rendered against the assignee for any excess; stated alternatively, a defendant may use such a claim *defensively*, but not *offensively*. We see no reason why the foregoing general rule should not also be applied to the assignment of an ordinary residential lease agreement, for collection purposes only, as occurred in this case. While this rule has been applied to a standard promissory note and other agreements, we can discern no material difference between these agreements and the ordinary residential lease agreement that was the basis for the claims and counterclaims asserted in this case for purposes of applying the rule. Accordingly, we hold that the circuit court erred in applying the law by entering judgment in favor of Kennedy for $192.00, which represented the amount that her counterclaim for set-off exceeded the amount of J&M's successful breach of contract claim against Kennedy. Because J&M's first point on appeal is dispositive of this appeal, we decline to address J&M's second and third points.

For these reasons, the judgment of the circuit court is reversed and remanded to the circuit court with directions to vacate the portion of the judgment whereby judgment was entered in favor of Kennedy and against J&M in the amount of $192.00.

Opinion by: Kelly C. Broniec, J.
Kurt S. Odenwald, P.J. and John P. Torbitzky, J. concur.

Attorney for Appellant: Lucas G. Guard

Attorney for Respondent: Nikki M. Kennedy, Pro Se

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.