

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

KOHNER PROPERTIES, INC.,)	No. ED103133
)	
Plaintiff/Respondent,)	Appeal from the Circuit Court
)	of St. Louis County
v.)	
)	
LATASHA JOHNSON,)	Honorable Judy Preddy Draper
)	
Defendant/Appellant.)	Filed: September 13, 2016

Latasha Johnson (Appellant) appeals from the trial court’s judgment in favor of Kohner Properties, Inc. (Respondent) on Respondent’s suit in rent and possession for unpaid rent.

On appeal, Appellant argues the trial court erred in barring her defense and counterclaim for the landlord’s violation of the implied warranty of habitability based on Appellant’s failure to pay her rent to the court *in custodia legis* pending litigation pursuant to King v. Moorehead, 495 S.W.2d 65, 77 (Mo. App. W.D. 1973).

TRANSFERRED TO THE MISSOURI SUPREME COURT.

Division Two Holds: The language in King, 495 S.W.2d at 77, stating a tenant in possession must pay his entire withheld rent to the court *in custodia legis* pending litigation as a prerequisite to raising a defense or counterclaim based on the implied warranty of habitability in a rent and possession action is nonbinding *dicta*. Instead, in a rent and possession action, the trial court has the discretion to enter an order requiring a tenant in possession of the leased premises to pay all, part, or none of the tenant’s withheld rent to the court *in custodia legis* upon either party’s request and after notice and an opportunity to be heard by the opposing party. However, due to the general interest and importance of the issues on appeal, we transfer to the Missouri Supreme Court pursuant to Missouri Supreme Court Rule 83.02.

Opinion by: Sherri B. Sullivan, P.J. Roy L. Richter, J., and Colleen Dolan, J., concur.

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