

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

CRAIG T. KOLB AND LAURA S. KOLB,

Respondents

v.

DEVILLE I PROPERTIES, LLC..

Appellant

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DOCKET NUMBER WD72305

DATE: December 14, 2010

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Paul Campbell Wilson, Judge

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Appellate Judges:

Division Two  
Mark D. Pfeiffer, P.J., James Edward Welsh, and Karen King Mitchell, JJ.

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Attorneys:

Jonathan C. Browning, Jefferson City, MO

Counsel for Appellant,

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Attorneys:

Craig Kolb, Jefferson City, MO  
Laura Kolb, Jefferson City, MO

Respondent Acting Pro Se  
Respondent Acting Pro Se

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**CRAIG T. KOLB AND LAURA S. KOLB, Respondents, v.  
DEVILLE I PROPERTIES, LLC., Appellant**

WD72305

Cole County

Before Division Two Judges: Mark D. Pfeiffer, P.J., James Edward Welsh, and Karen King Mitchell, JJ.

DeVille I Properties, LLC, appeals the circuit court's judgment ordering deVille to pay damages to Craig T. and Laura S. Kolb for their claim of breach of implied warranty of habitability due to a bedbug infestation at one of deVille's properties. DeVille contends that the circuit court erred in determining that deVille breached the implied warranty of habitability, in ruling against deVille on its counterclaim for damages against the Kolbs, and in ruling that deVille was not entitled to recover its attorney's fees and court costs from the Kolbs.

**AFFIRMED.**

**Division Two Holds:**

(1) The circuit court did not erroneously declare or apply the law in determining that deVille breached the implied warranty of habitability. The evidence in this case was sufficient to establish that the Kolbs gave deVille reasonable notice of the bedbug problem and that deVille failed to restore the premises to a habitable condition. Moreover, the circuit court did not err in allowing the Kolbs to recover all the rent that they paid while residing in the apartment. The damages in this case correctly represent the difference between \$405 (the agreed rent) and \$0 (the fair rental value of the premises with a bedbug infestation).

(2) The circuit did not erred in ruling against deVille on its counterclaim for damages against the Kolbs for their failure to give timely notice of their intent to vacate. Because deVille failed to restore the premises to a habitable condition, the Kolbs' notifying deVille of the conditions and their moving out of the apartment at the end of their lease term effectively terminated their obligations under the lease. Moreover, because the premises were uninhabitable due to the bedbug infestation, deVille was not entitled to payment for cleaning of the apartment.

(3) Because deVille is not a prevailing party in this action, it is not entitled to attorney's fees.

**Opinion by: James Edward Welsh, Judge**

December 14, 2010

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**