

RESIDENTIAL LANDLORD TENANT OUTLINE

I. Preliminaries

- A. Most of the law on non-subsidized tenancies is found in Chapters 441, 524, 534, and 535.
- B. Government subsidized housing rules present a different paradigm.
 1. Distinguish “Public Housing” from “Subsidized Housing”
 2. USDA/RHS and HUD have multiple programs, and it is necessary to determine which particular program your client is participating in to ascertain the rules that govern the tenancy. An Appendix of citations to the rules for a variety of the programs has been added to this outline. In addition to the Federal regulations, HUD publishes various Housing Manuals that give more fine-grained rules for administration of the projects (e.g., HUD Housing Guidebook 7420.10g for the Tenant Housing Choice Voucher Program.) Those manuals should also be consulted before determining an appropriate defense to termination of a voucher or an eviction proceeding.
 3. Under the HUD Tenant Housing Choice Voucher Program, the LL is able to enforce its own lease, but **MUST** attach the “HUD Lease Addendum.” The Addendum rules protect the rights of tenants, and trump contradictory rules in the dwelling lease itself.
 4. MHDC/LIHTC Rules
 - a) Where Projects have received a Low Income Housing Tax Credit from the Missouri Housing Development Commission, there may be additional rules protecting the tenant.
 5. Agency termination of housing benefits -- where Agency is terminating, there are specific Federal regulatory due process rights afforded to the tenant. *See Appendix.*

NOTE: HUD Voucher Agency is required to continue voucher payments until a judgment of eviction has been entered. (24 C.F.R. 982.311) If the Agency refuses (giving the LL an additional ground for eviction), tenant’s counsel should third-party the Agency into the lawsuit. But note that technically the tenant is only contractually obligated to pay the tenant component of the rent under subsidized lease. Agency is empowered to continue payments until the tenant actually removes from the unit. (24 C.F.R. 982.311)

II. Is this a rejected *application* case (as opposed to *eviction*)?

A. Subsidized Housing

1. Public Housing, 24 C.F.R. 960.203(d) – list of mitigating factors which must be considered by HA before denial

2. Section 8 Voucher, 24 C.F.R. 982.552(c)(2) - list of mitigating factors which must be considered by HA before denial

B. Private Housing

1. Fair Housing Act
 - a) Rejection of an application on the basis of a protected classification is actionable.
2. Use of criminal and eviction records in screening applicants may create a disparate impact claim under the Fair Housing Act.
3. Potential Fair Credit Reporting Act claim against investigating service

III. Defending Termination of Non-Subsidized Tenancies – Rent and Possession, Unlawful Detainer, and Ejectment. NOTE: the court-supplied form “Landlords Complaint” doesn’t expressly denominate the cause of action sought to be prosecuted, but may be distinguished by whether Plaintiff alleges a demand for rent (thus R&P), or for possession of the premises (thus UD). It may also be sufficient (under the relaxed pleading rules of Sec. 517.031.1 RSMo) to constitute a complaint in ejectment as well.

A. Unlawful Detainer (Chapter 534, RSMo)

1. “[S]ince the unlawful detainer act is itself complete, such a proceeding is not measured or determined by ordinary rules and proceedings in civil cases.” *Schnitker v. Schnitker*, 690 S.W.2d 509 (Mo. App. W.D. 1985), quoting *First National Bank v. Kavorinos*, 283 S.W.2d, 452, 457 (Mo. 1955)
2. “Forfeiture of a lease for breach of a covenant or wrongful act of a tenant, however, is a harsh remedy, ‘liable to produce great hardship, if not oppression ... and is not favored by the courts. A covenant permitting a forfeiture will be strictly construed against the party invoking the forfeiture and in favor of the lessee. [T] effectuate such a forfeiture every requirement of the common law must be scrupulously observed, unless waived by agreement.” *Independence Flying Service v. Abitz*, 386 S.W.2d 399, 404 (Mo 1965) [internal citations omitted.]
3. The gist of the above is that the repugnance of the court to common forfeiture of a lease is a thread throughout the notice, pleading, and service aspects of a Chapter 354 case.
4. Sec. 534.030 RSMo states four distinct bases for finding of an unlawful detainer:
 - a) holdover tenant
 - b) foreclosure
 - c) employment related occupation of premises
 - d) where defendant entered unlawfully, *and* refused demand to quit possession. (cf. however, Sec. 534.200 RSMo which

seems to conflict with this ground since it provides that landlord may prove that tenant unlawfully entered into and detained “OR” unlawfully detained [the premises]).

5. Defenses and Affirmative Defenses unique to UD
 - a) tenant must have been in possession at time of filing, *Williams v. Carey*, 225 S.W.2d 157 (Mo.App. W.D. 1949) citing other cases to same effect
 - (1) otherwise, will revert to a “rent” case with no double damages.
 - b) tenant must come within one of the separate grounds of 534.030
 - (1) this calls for a very careful analysis of the facts!
 - c) Notice/Demand Requirements
 - (1) Pleaded grounds for termination must not exceed those given in the notice. (*Abitz*)
 - (2) if demand is for rent, it must be made precisely on the very day when the rent becomes due, and for the precise amount due. (*Abitz*)
 - d) breach by tenant must be substantial and material
 - e) 534.300 sets up a “3 year statute of limitations”
 - (1) this has been limited by case law, which reasons that where the tenant’s occupation of the property under a lease is actually that of the landlord’s, the statute can’t run.
 - (2) only applicable in rare situation where individual entered lawfully, with permission but without a tenancy established
 - f) when based on termination of statutory month-to-month tenancy,
 - (1) permanent and fixed dwelling: 30 days notice on or before the due date of the rent (Sec. 441.060.1 RSMo)
 - (2) mobile home: 60 days (Sec. 441.060.4(2))
 - (a) “the mobile home predicament”
 - (3) short notice is “no” notice at all (*Davidson v. Kenney*, 971 S.W.2d 896 (Mo.App. W.D. 1998)
 - g) Violence Against Women Act (VAWA)
 - (1) applicable to various Federally subsidized units
 - (a) 42 U.S.C. Sec. 1437d
 - (2) basically precludes use of domestic violence against a tenant as a ground for eviction or termination of assistance, and makes such information confidential.
 - h) Reasonable Accommodation of Disability

(1) Disability is protected under three separate Federal Acts:

- (a) Fair Housing Act (applies to both private and public housing)
- (b) Americans with Disabilities Act (applies to common areas of residential units)
- (c) Rehabilitation Act of 1973 (only applies to Federally funded entities.)

i) Other Fair Housing Act Violations

- (1) discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin.
- (2) Missouri courts have been hostile to Fair Housing Act violation claims as defenses to R&P or UD suits. See the list of cases set out in *Wells Fargo v. Smith, infra*, at pp. 454-455. *Smith* may have opened up this area of defense for tenants.

j) breach by landlord of the implied warranty of habitability

- (1) *King v. Morehead*, 495 S.W.2d 65 (Mo.App.E.D 1973) changed the fundamental relationship between a residential landlord and tenant, and affirmed the right of a tenant to defend or sue based on a breach by the landlord of a covenant, in particular, the implied warranty of habitability
- (2) *King* was followed the decision of the Missouri Supreme Court en banc in *Detling v. Edelbrock*, (671 S.W.2d 265) (1984) which extended the theory of breach of implied warranty of habitability to both an affirmative claim, and an affirmative defense against rent and attorney fee claims by the landlord.
- (3) evidence of violation of local building ordinances, pleaded verbatim, can demonstrate a *per se* breach.
- (4) issue remains whether *Detling* implicitly removed the requirement of *King* that the tenant post rent with the court while litigating the alleged breach.

6. Landlord's Damages

- a) Holdover damages are only calculated for the period after the notice of termination of the tenancy and up to the time of the judgment, on a pro-rata basis of the days of the month. *Colt Investments, LLC v. Boyd*, 2013 WL6181952 (Mo. App. E.D. 2013)
- b) Damages must be calculated as well for waste and injury, as well as for all rents and profits due and owing up the time of the finding of the judge. Sec. 534.310 RSMo.

- c) Damages are also doubled for the period of holdover and for any waste. Sec. 534.330.1 RSMo.
- 7. Right to Jury trial
 - a) however, time limits for applying for jury trial
- 8. Right of Counterclaim
 - a) Much caselaw declares that counterclaims cannot be filed in UD cases. *See Schweer, R.*, “The No Counterclaim Rule in Unlawful Detainer Proceedings”, 68 J. Mo. Bar, 162 (2012) for background.
 - b) However, in *Wells Fargo Bank, N.A., v. Smith*, 392 S.W.3d 446 (Mo Banc, 2013) Judge Wilson expressly stated that there is no general prohibition against counterclaims, merely that the issue of title cannot be inserted into a UD case because of the prohibitions found in Sec. 534.200 and 534.210, RSMo, forbidding raising the title issue, by defense, affirmative defense, or counterclaim. This opinion made clear that the proper solution is for a tenant with title issues to file an action in the Circuit Division to resolve those issues, and seek a stay of the unlawful detainer action.
 - c) *Wells Fargo* clearly seems to give new life to the counterclaim as a tool in defending UD actions.
- 9. Right to Change Venue
 - a) can get change of venue because of jury trial right – but do you need to request jury trial before getting change of venue?
- 10. Right of continuance from return date.
 - a) Strong doctrine in Missouri law regarding “summary” proceedings.
 - b) Sec. 534.070 RSMo provides that a court date shall be assigned at the time the summons is issued.
 - c) Under Chapter 517.021, the rules of civil procedure apply except where otherwise provided by law. Sec. 517.071 provides that a case can be continued by motion of any party made on or before the return date.
 - d) Thus, even assuming the more particular UD rule applied if inconsistent with the 517 rule, there seems to be no inconsistency – a court date is set by the summons under 534.070, and should be continued under 517.071.
- 11. Right of Action for Unlawful Dispossession.
 - a) Sec. 535.170 RSMo grants a remedy of money damages for an R&P defendant who is evicted by court process, but eventually prevails in the courts. Query whether the common

law holds a similar remedy for UD defendants who prevail on appeal.

12. UD judgment does not declare title – so losing defendant loses right to possession, but still has a cause of action to vest title in tenant in an appropriate action (e.g., quiet title) Note, this is an outgrowth of 534.200 and .210. See, *Graham v. Conway*, 91 Mo.App. 391 (W.D. 1902)

B. Rent and Possession (Chapter 535, RSMo)

1. Notice of rent delinquency

a) mandatory demand for rent requirement is satisfied by the service of the Petition

(1) *Manion v. Khan, Inc.* 992 S.W.2d 198 (Mo.App. E.D. 1999), and 535.140

2. Relief Permitted

a) rent owing (calculated through time of trial) with pro-ration for final month (*Colt Investments, LLC v. Boyd*, 2013 WL6181952 (Mo. App. E.D. 2013))

b) any other charges allowable under the lease, but such may not be considered “rent” for purposes of determining proper tender by tenant to maintain possession, regardless of whether they are denominated as “rent” in the lease. (Sec. 535.020 RSMo)

c) NOTE: Judgment should segregate classes of damages so tenant has a clear amount to tender to preserve possession.

d) property damages may NOT be claimed.

3. Sec. 535.020 RSMo requires that all persons occupying the premises be named (thus causing a need for “John and Jane Doe” defendants.)

4. Defenses and Affirmative Defenses Unique to R&P

a) Payment of Rent

(1) “Payment” is not an affirmative defense; LL bears burden to show non-payment

(2) Where subsidy is contracted for under HAP contract, failure of Agency to pay rent due to HQS violations is not a ground for R&P action

(3) work performed in satisfaction of obligation to pay rent

b) Right of Tender of Rent (Sec. 535.160 RSMo)

(1) Time to tender – up to final judgment

(2) Amount to tender – judgment for “rent” with costs (see discussion of proper amount of tender above.)

c) Waiver and Estoppel

(1) applies where LL has accepted promise of tenant to pay rent late, or in installments, etc.

d) defend against lease clause “denominating” certain things as “rent” which contradicts the statutory definition of “rent.”
(See above)

5. Counterclaims are permissive, but not compulsory

a) *Rahman v. Matador Villa Assoc.*, 821 S.W.2d 102 (Mo. banc 1991).

6. Change of Judge and Venue

a) no change of venue since not jury triable

(1) but see *Moser v. Cline* on 2 count Petition including UD

b) on change of judge, 535.100 references 517.061

(1) five days notice required (cf. 4 day notice of trial rule! 535.030)

7. Right to Request Continuance

a) Sec. 535.030 RSMo provides that “[u]pon the return of the summons executed, the judge shall set the case on the first available court date and shall proceed to hear the cause ...”

b) this procedure seems to collide with the modern Chapter 517 process of issuing a subpoena which sets out a particular court date. Neither does it seem to provide the previously served Defendant with notice of the date on which the case will be tried. Nonetheless, most judges will insist, in solemn tones, that the statute MANDATES the court to hear the court on the return date --- unless, of course, Plaintiff, or Plaintiff’s attorney, or Plaintiff’s witnesses are not available --- in which case the “mandatory” nature of the rule disappears, and a continuance will be granted.

C. Ejectment (Chapter 524 RSMo)

1. The now-repealed statute limiting subject matter jurisdiction of the magistrate/associate division court required the filing of an Ejectment action in the Circuit Court, consequently requiring a larger filing fee, triggering a thirty-day answer period, and invoking the Rules of Civil Procedure. Thus, the “summary” remedies of R&P and UD came to be preferred by landlords seeking a more immediate restitution of the premises. However, under the Court Reform Act, and case law establishing that the Circuit Division and Association Circuit Division have concurrent jurisdiction [name the case] Ejectment may now be filed in the Associate Division of the Circuit Court, under the procedures established in Chapter 517 RSMo.

2. MAI Civil 27.01 requires the Plaintiff to establish only that Defendant was in possession at the time of the filing of the Petition, and that Plaintiff had the right to possession on that date.
3. Relief: damages for detention (loss of rents and profits from date Defendant received notice to quit [fair market value computation]) and damages for waste to the premises.
4. Affirmative Defenses and Counterclaims of the Defendant:
 - a) “Good Faith” (MAI 16.03) of Defendant in maintaining possession;
 - b) Counterclaim for improvements to the premises.
5. Under *Moser v. Cline* (above), there is no improper joinder of claims occasioned by pleading (one would assume, preferably, in different counts) both UD and R&P actions. I see no reason an Ejectment count could not be alternatively pleaded as well.

IV. Procedural Defenses Common to UD, R&P, and Ejectment

A. Standing issues

1. Issue is: does the named Plaintiff have the proper “stake”?
2. meaning of “landlord” : see, *Johnson v. Simpson Oil Company*, 394 S.W.2d 91 (Mo.App. S.D. 1965) which defines “landlord” as the person in subordination to whom the tenant occupies. Johnson cites *Marden v. Radford*, 84 S.W.2d 947 as setting out the essentials of the relationship between a landlord and a tenant: “[t]he relation of landlord and tenant may be defined in general terms as that which arises from a contract by which one person occupies the real property of another with his permission and in subordination to his rights; the occupant being known as the tenant and the person in subordination to whom he occupies as the landlord. The authorities agree, as essential to such relationship, that there must be a reversion in the landlord; the creation of an estate in the tenant, at will or for a term less than that for which the landlord holds the same; the transfer of the exclusive possession and control of the premises to the tenant; and, generally speaking, a contract, either express or implied, between the parties.
3. who can bring suit besides the “landlord”?
 - a) Sec. 534.070 RSMo provides that a petition “signed by the party aggrieved, his agent or attorney, and sworn to ...” is proper.
 - b) Sec. 535.020 RSMo provides that “the landlord or agent may file a statement, verified by affidavit”
 - c) Neither of these sections specify who the named Plaintiff must be.

(1) this becomes significant if a counterclaimant prevails in the action: against WHOM does he have a judgment.

4. If there are multiple owners, all must join (or, ostensibly, be represented by the same agent.) If not, a motion add a necessary party should lie (see, *Kingsley v. Burack*, 536 S.W.2d 7 (Mo. banc, 1976))

5. If you determine the named Plaintiff does not meet the definitions of the statute, you should move to dismiss the Petition for failure to state a cause of action.

B. Who are proper Defendants?

1. 534.590 clears out “stragglers” and “squatters” for UD.

2. But where Tenants A & B have equivalent leasehold interests, Plaintiff must join both.

3. Sec. 535.020 RSMo requires that “a summons [be] directed to ... *all* persons occupying the premises, by name” (emphasis supplied)

4. Solemnization of the pleading

a) failure to properly verify makes the Petition subject to dismissal (*Emert v. Waldman*, 186 S.W.2d 42 (Mo.App. 1945))

b) However, *Federated Mortgage and Investment Co. v. Jones*, 798 S.W.2d 719 (Mo. 1990) says that the failure did not deprive the court of jurisdiction, in the sense that the judgment could be set aside the appeal time had run.

c) Where Plaintiff’s counsel verifies:

(1) Rule 4-3.7, MRofCP, Rules of Professional Conduct, “Lawyer as Witness,” provides that “[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness”

(2) Plus, it’s very unlikely that the attorney knows any facts from personal knowledge.

d) A testifying that A knows something A does not know from personal knowledge doesn’t satisfy the meaning of affidavit. *Emert v. Waldman*, 186 S.W.2d 42 (App. 1945)

e) A testifying that B knows something is improper (*Emert*)

f) Complaint in unlawful detainer suit in justice of peace court could be amended by having affidavit attached thereto. *State ex rel. Goodson v. Hall* (App. 1934) 72 S.W.2d 499, 228 Mo.App.

g) MOVE TO DISMISS for failure to state a cause of action.

5. Time for Service

a) Statutes

- (1) 534.090 and 535.030 only require service four days prior to the return date.
 - b) application of Rule 43.01 – count your days – if service is short, file special entry and object to jurisdiction over your client.
 - c) 535.030 requests that the return date be no more than 21 business days from the date of issuance, unless Plaintiff consents in writing. See if this happened with Plaintiff’s consent, and raise it as a defense.
6. Service of Process
- a) Posting
 - (1) 534.090 states that “[i]f the summons in such action cannot be served in the ordinary manner as provided by law, it shall be the duty of the judge ...” to order posting.
 - (2) This seems to require a non-est return on personal service be filed before the court has authority to order posting
 - (3) Note that on service by posting and mail only, landlord cannot gain a monetary judgment (but this doesn’t preclude a later action for money)
 - (4) 535.030 also provides for posting but does not appear to require a non-est return on personal service. It does disallow a money judgment where service is by posting only
 - b) Special Process Servers (see *Worley v. Worley*, 19 S.W.3rd 127 (Mo. banc, 2000). See also *Reisinger v. Reisinger*, 39 S.W.3rd 80 (ED, 2001)
 - (1) Has there been a proper nomination
 - (2) Is the return complete and attested?
 - (3) No presumption of validity is afforded to a return by a special process server.
7. Filing responsive pleadings
- a) Chapter 517 requires no answer, but requires any affirmative defense or counterclaim be filed by the “return date” on the summons.
 - b) *Neenan Co. v. Cox*, 955 S.W.2d 595 (Mo.App. W.D., 1997) says “return date” means the “return date as continued.”

V. Tenant’s Substantive Defenses, Affirmative Defenses and Counterclaims Common to UD & R&P

A. Defenses

1. rent calculation
 - a) especially in subsidized tenancies which have rules on calculation of tenant income (with interim adjustments required) depending on tenant's income.
 - (1) there are many regulations requiring particular notice to a subsidized tenant to provide income information for recertification of the tenant component of the rent, and many housing authorities and site managers don't follow these rules – it profitable to review all such policies
 2. Payment of Rent
 - a) work performed in satisfaction of obligation to pay rent
 3. Pro-ration of holdover (case)
- B. Affirmative Defenses
1. Defenses specific to subsidized housing
 - a) illegal side agreements (anything that violates rent ceiling)
 - (1) renter's insurance
 - b) Housing Quality Standards violations (subsidized housing)
 - c) Where subsidy is contracted for under HAP contract, failure of Agency to pay rent due to HQS violations is not a ground for R&P action
 2. Unenforceable Lease Provisions
 - a) Penalty Clauses
 - (1) late rent fees
 - (a) challenge with affirmative defense that the late fee provision was a penalty, not a liquidated damage because the amount was not impossible to estimate, and that the amount far exceeds the actual costs of collection of the late fee by the Landlord.
 - (2) confession of judgment
 - (a) this is barred in subsidized tenancies
 3. Breach of the Implied Warranty of Habitability
 - a) *King, Detling, Kolb*
 - b) *per se* breach
 - (1) municipal codes, International Property Maintenance Code
 - (2) must plead verbatim or in substance and effect
 - (3) obtaining citations from Building Inspectors
 - c) need to deposit rent into court?
 4. Accord and Satisfaction

- a) Generally, where tenant has performed work under agreement for abatement of rent.
 - 5. Waiver and Estoppel
 - a) applies where LL has accepted promise of tenant to pay rent late, or in installments, etc.
 - 6. 535.030 – if P. does not consent in writing, case can't be set for more than 21 days out.
 - 7. VAWA defenses (see above)
 - 8. "Payment" is NOT an affirmative defense – it's the P's burden (*Smith v. Thomas et al.*, WD65881 (WD 2006))
 - 9. Municipal Ordinances – Landlord Tenant Codes (see below)
- C. Counterclaims
 - 1. R&P
 - a) explicitly allowed (Matador Villa)
 - (1) not compulsory
 - b) property damages to tenant's property
 - c) breach of warranty of habitability
 - d) premises liability tort claims
 - 2. UD (see discussion above under UD)

VI. Settlements

- A. Neutral Reference Provision
- B. Non-disclosure provision
- C. Advance resolution of property damage claims or deferring resolution of case until after premises have been inspected.
- D. Preference for tenant that settlement result in a dismissal with prejudice of the eviction action.
- E. Working out a *realistic* exit date is extremely important. It's easy when trying to avoid trial and damages to promise your client will be out tomorrow. When they're not, even more trouble develops.

VII. Enforcement of the Judgment for Possession

- A. What Process is required?
 - 1. Separate Writ of Restitution (OSCA Form)
 - 2. Incorporate writ language in Judgment?
 - 3. See Appendix Two on statutory enforcement alternatives.
- B. Note that Sec. 534.590 RSMo generally gets ignored – but it gives enforcement against all persons holding under the named Defendant (all the John Does and drifters that have occupied the place!).

VIII. Residual issues after immediate right of possession has been determined.

- A. Enforcing the judgment right of possession

1. The law has become a mishmash of seemingly contradictory provisions, sorted out according to the basis for the judgment for possession. I have attached an Appendix to this outline listing the pertinent statutes. Landlords many times make mistakes (including forcible entry and conversion) at this point in the process, which can be capitalized on by the client.
2. Note that landlord must obtain ancillary writ of execution or restitution, or have such language incorporated in the judgment of possession, in order to obtain possession (*with the exception of expedited evictions, see below.*)

B. Leaving tenant in possession, but “holding Judgment over tenant’s head?”

C. Landlord’s continuing rights under the lease rights after eviction

1. examine language – does termination notice terminate the lease or the tenancy?
2. where only the tenancy is terminated, both parties (although, effectually, only the landlord) have continuing rights. See the fascinating discussion by Judge Teitleman in *WEA Crestwood Plaza v. Flamers Charburgers*, 24 S.W.3d 1 (Mo.App. E.D. 2000.)F.

IX. Additional Issues

A. Expedited Evictions

1. Secs. 441.710 to 441.880 RSMo.(Aug. 1997)
2. Elements: the right to immediate action to evict a tenant exists when eviction by a more lengthy period would imminently cause physical injury to other tenants or lessor, would cause imminent damage to lessor’s property and the cost to repair would exceed 12 month’s rent. In addition a request for immediate eviction may be made when there has been drug-related criminal activity on or within property leased to tenant, or tenant has permitted a “barred” person onto the property
3. Consequences: Landlord can use self-help eviction ten days after notice, but bears burden later in court on forcible entry issues (except reliance on law enforcement report of drug use is a defense.) Generally, use of self-help eviction is precarious, and the Missouri Practice writer on this issue counsels against it.
4. It is necessary for the practitioner to carefully read the text of 441.710 to 441.880 to properly determine the alternatives of a tenant who is defending an “expedited eviction.”

B. Abandonment statute

1. Sec. 441.065 RSMo (Aug. 1997)

2. Elements: the landlord has reasonable belief that the tenant has vacated the premises; the rent is due and has been unpaid for thirty days; the landlord posts written notice and mails to last known address of tenant by first class mail and certified mail return receipt requested; the tenant fails to either pay rent or respond in writing to landlord's notice within ten days.

3. Consequences: If LL cannot prove abandonment, LL is liable for forcible entry under 534.

C. Inadequate and Deficient Housing

1. Secs. 441.500 to 441.645 (1969 and subsequent amendments)

2. Elements: Plaintiff must prove municipal building code violations.

3. Consequences: statutes authorize carefully structured tenant rent strikes to force landlords into compliance with building codes. Either a municipal authority or one third of the tenants of a building can file suit to compel their landlord to fix building code violations. If a court finds a violation, it can order tenants to pay rent to the court until violation is fixed, no jury. Under 441.510: If any building or dwelling is found to be in violation of building or housing codes which the county, municipality, local housing corporation or neighborhood association in the exercise of reasonable discretion believes constitutes a threat to the public health, safety or welfare, and alleges the nature of such threat in its petition, the county, municipality, local housing corporation or neighborhood association, in addition to any other remedies available to it, may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement.

D. Security Deposit Return Statute

1. Sec. 535.300 RSMo (1983)

2. Elements: landlord can't receive a security deposit in excess of more than two months rent; thirty days after the termination of tenancy the landlord must return full deposit or provide a written itemized list of why landlord withheld security deposit. tenant can sue for twice the amount wrongfully withheld.

3. Consequences: LL may be liable up to twice the amount of the security deposit. This provision actually insulates LL's from conversion damages and punitive damages even when deposits are willfully and in bad faith withheld from tenants.

4. Details: obtaining property condition inventory before entering into lease; arranging exit walk-through at termination; documentation of property condition through video and witnesses; tenant must provide landlord with forwarding address or other method of giving notice.

E. Statutory Constructive Eviction

1. Sec. 441.233 RSMo (1997)
2. Elements: If a landlord or its agent removes or excludes a tenant or tenant's personal property, or causes the removal of doors or locks, they shall be guilty of forcible entry and detainer described in chapter 534; any landlord who willfully diminishes services including but not limited to electric, gas, water, or sewer service except for safety reasons, shall be guilty of forcible entry and detainer.
3. Consequences: LL is liable for double damages under the provisions of Sec. 534.020 RSMo.
4. This is a very effective statute to cite in a blast letter to a landlord who has terminated utilities, or locked a tenant out.

F. Tenant to be furnished address of person managing property

1. Sec. 535.185 RSMo (1989)
2. Elements: Tenant must be furnished the name and address of person authorized to manage the premises and an owner of or the premises or a person authorized to act on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands
3. Consequences: Tenant may have injunctive relief available to force disclosure.

G. Repair and Deduct Statute

1. Sec. 441.234 RSMo (1997)
2. Elements: the tenant has to have lawfully resided on the premises and be current on rent for six consecutive months; if the condition affects the habitability, sanitation or security and is a violation of housing or building code, and the cost is less than \$300.00 or ½ of the rent whichever is greater, the tenant can notify in writing the landlord of tenant's intent to fix at landlord's expense. If landlord refuses to fix within 14 days of notification, tenant can cause the work to be done in a workmanlike manner. Tenant should send landlord an itemized statement including receipts, then deduct rent. The landlord can give in writing within the 14 day period a notice disputing the necessity of the repairs. If that is done, the tenant will have to provide certification from the local government entity that the conditions violate housing or building codes before the work is done. Tenant can't repair at landlord's expense if condition is tenant's fault.

H. Extended Quit Notice Necessary for Mobile Homes

1. Sec. 441.060.4 RSMo (1997) provides for a 60 day quit notice for mobile homes tenants (as opposed to the statutory 30 day notice for fixed-dwelling, month-to-month dwellings.)

2. Short notice is no notice at all (*Davidson v. Kenney*, 971 S.W.2d 896 (Mo.App. W.D. 1998))

I. Damages to Tenant's Property Due to Failure of Unit

1. General rule that landlord is not an insurer of tenant's property (*see 123 S.W.3d 274, and 899 S.W.2d 101*)

2. Lease provisions may require renter's insurance, and contain hold harmless clause

3. But see, *Baird v. Ellsworth Realty Co.*, 265 S.W.2d 770 (Mo. WD 1954). Successful action by a tenant for property damage sustained when steam escaped from pipe in apartment occupied by tenant and owned by defendant landlord

J. Premises Liability Issues

1. effect of lease disclaimers/hold harmless clauses

2. (I have not researched this issue, and only bring the issue to your attention.)

X. Municipal Landlord/Tenant Codes

A. Only enacted in certain cities (Kansas City, Independence, St. Louis?, Springfield?, and Columbia?)

B. Kansas City Ordinance as Example

1. Sec. 50-109 lists "Unlawful acts by landlords and tenants of residential premises"

2. Landlord can't: exclude tenant or his property from premises, diminish utility services, retaliate with a rent increase for complaints.

3. Violations of the ordinance are an infraction, subjecting the defendant to fine and incarceration.

4. Recent information says that law enforcement is not vigorously enforcing this ordinance.

XI. Problem issues:

A. Lease v. Sale

1. Sale of property is subject to an existing lease, at least where lease provisions aren't contrary, and lessee is in possession at time of sale (51 C.J.S. 258(2))

2. Sec. 535.070 RSMo requires that the tenant attorn to the purchaser and pay rent, or be subject to an action for rent and possession under Sec. 535.090 RSMo.

3. Sec. 535.081 RSMo sets out notice requirements that a successor in interest to a landlord must give to the tenant(s)

B. Lease v. Mortgage

1. where mortgage antedates lease, foreclosure extinguishes lease (*McGill v. Brown*, 256 S.W. 510 (1921))

2. where lease and loan are contemporaneous, lessee needs to demand a subrogation clause in the deed of trust, preserving the lease from foreclosure;

C. Do provisions of a written lease carry over to govern the rights of the parties when the lease for a term is converted, by the passage of time and the operation of law, to a month-to-month tenancy?

1. Unless there is some provision in the lease providing for the carry-over, the old terms do not apply. *Schnucks v. Bridgeton Health*, 884 S.W.2d 733 (Mo.App. E.D. 1994)

2. Compare, “In addition, the law presumes that a holding-over after the normal termination of a lease is under and subject to the same terms and conditions of the original lease, unless the contrary is shown. *Housing Authority of City of Mansfield v. Rovig*, 676 S.W.2d 314 (Mo.App. S.D. 1984)

3. So, there is a split in the circuits.

(There is no longer a right to a trial de novo in Chapters 535 and 534 cases with the passing of SB 655 2014.)

APPENDIX OF REGULATION CITATIONS FOR SUBSIDIZED HOUSING

HUD

	24(CFR)	24(CFR)Termination Regulation
Sec. 8 New Construction	880	880.607
Sec. 8 Moderate Rehabilitation	882	247.3 &247.6
Sec. 8 Substantial Rehabilitation	881	880.607
Sec. 8 State Agencies	883	247.3 &247.6
Sec. 8 Special Allocations	886	247.3 &247.6
Sec. 8 Sec 202 Elderly Set Aside	891	247.3 &247.6
Sec. 8 Sec. 811 Disabled Set Aside	891	247.3 &247.6
		PHA
Tenant Based Section 8 Vouchers	982	982.552 termination
		Owner
		982.310 Termination
Public Housing	966	966.4(1)
Rural Housing Service		
USDA	7 CFR 3560	7 CFR 3560.159

APPENDIX: Post-Judgment Remedies of Landlord

441.060. Tenancy at will, sufferance, month to month, how

5. If after the rendition of a judgment and a request for an execution on any judgment rendered in an action pursuant to chapter 524, RSMo, chapter 534, RSMo, chapter 535, RSMo, or this chapter and there is no stay of execution, the service officer fails to deliver possession of the premises to the landlord within seven days of the delivery of the writ to such officer, the landlord may, within sixty days of the date of the judgment, in the presence of a municipal or county law enforcement officer of the jurisdiction in which the premises are located, without breach of the peace, break and remove locks, enter and take possession of the premises and remove any household goods, furnishings, fixtures or any other personal property left in or at the premises, provided the law enforcement officer is first presented a true copy of the judgment and order of execution, and the law enforcement officer acknowledges in writing such presentation, and such acknowledgment is filed in court by the plaintiff within five days following taking possession of the premises.

Rent and Possession

535.040. Upon return of summons, cause to be heard. 1. Upon the return of the summons executed, the judge shall set the case on the first available court date and shall proceed to hear the cause, and if it shall appear that the rent which is due has been demanded of the tenant, lessee or persons occupying the property, and that payment has not been made, and if the payment of such rent, with all costs, shall not be tendered before the judge, on the hearing of the cause, the judge shall render judgment that the landlord recover the possession of the premises so rented or leased, and also the debt for the amount of the rent then due, with all court costs and shall issue an execution upon such judgment, commanding the officer to put the landlord into immediate possession of the property leased or rented, and to make the debt and costs of the goods and chattels of the defendant. No money judgment shall be granted to the plaintiff if the defendant is in default and service was by the posting procedure provided in section 535.030 unless the defendant otherwise enters an appearance. The officer shall deliver possession of the property to the landlord within five days from the time of receiving the execution, and the officer shall proceed upon the execution to collect the debt and costs, and return the writ, as in the case of other executions. If the plaintiff so elects, the plaintiff may sue for possession alone, without asking for recovery of the rent due.

2. Except for willful, wanton, or malicious acts or omissions, neither the landlord nor his or her successors, assigns, agents, nor representatives shall be liable to any tenant or subtenant for loss or damage to any household goods, furnishings, fixtures, or any other personal property left in or at the dwelling by the tenant or

subtenant of such dwelling, by the reason of the landlord's removal or disposal of the property under a court-ordered execution for possession of the premises.

3. Notwithstanding the provisions of subsection 2 of this section, if, after the sheriff has completed the court-ordered execution, property is left by the tenant in or at the dwelling bearing a conspicuous permanent label or marking identifying it as the property of a third party, the landlord shall notify the third party by certified mail with a return receipt requested. The third party shall be given an opportunity to recover such property within five business days of the date such notice is received. If the landlord is unable to notify the third party, the landlord may remove or dispose of such property and shall incur no liability for any loss or damage thereto.

535.170. Lessee, etc., barred from relief, when After the execution of any judgment for possession pursuant to this chapter, the lessee and the lessee's assignees, and all other persons deriving title under the lease from such lessee, shall be barred from reentry of such premises and from all relief, and except for error in the record or proceedings, the landlord shall from that day hold the demised premises discharged from the lease. Nothing in this section shall preclude an aggrieved party from perfecting an appeal as to any judgment rendered, and may as a result of such appeal recover any damage incurred, including damages incurred from an unlawful dispossession.

534.355. Court may include in judgment of possession an order to In an action pursuant to chapter 441, RSMo, chapter 524, RSMo, **chapter 535,** RSMo, or this chapter, the court in entering a judgment for possession of the premises, at the request of the prevailing party, may order the sheriff or appropriate officer to deliver possession of the premises to the prevailing party within fifteen days of the date the judgment becomes final. Said order may be withdrawn at the request of the prevailing party.

Unlawful Detainer

534.330. Judgment on verdict for complainant. 2. The court, upon issuing judgment in favor of the plaintiff pursuant to subsection 1 of this section, shall, within two business days following the date the judgment becomes final, transmit a copy of such judgment to the law enforcement agency with jurisdiction to enforce such judgment.

534.345. Notice, order to relinquish possession. In an action pursuant to chapter 441, RSMo, chapter 524, RSMo, or this chapter, the court in entering a judgment

for possession of the premises shall, if the defendant defaults, send a notice to the party ordered to relinquish possession that a judgment for possession of the premises has been entered against said party, and said party must vacate the premises when the judgment is final.

534.350. Execution-when issued and levied.

The judge rendering judgment in any such cause may issue execution at any time after judgment, but such execution shall not be levied until after the expiration of the time allowed for the taking of an appeal, except as in the next succeeding section is provided.

534.355. Court may include in judgment of possession an order to

In an action pursuant to chapter 441, RSMo, chapter 524, RSMo, chapter 535, RSMo, or this chapter, the court in entering a judgment for possession of the premises, at the request of the prevailing party, may order the sheriff or appropriate officer to deliver possession of the premises to the prevailing party within fifteen days of the date the judgment becomes final. Said order may be withdrawn at the request of the prevailing party.