

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
ASSOCIATE CIRCUIT DIVISION  
AT KANSAS CITY**

**QUALITY HILL APARTMENTS LP**

**Plaintiff,**

**v.**

**KEYON HARDIN**

**Defendant.**

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**Case No. 2316-CV17026  
Division 27**

**JUDGMENT IN FAVOR OF DEFENDANT WITH  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On the 21<sup>st</sup> and 25<sup>th</sup> days of September 2023 this cause came before the Court for trial. Plaintiff, Quality Hill Apartments, L.P., appeared by and through their attorney, L. Donald Huelson. Defendant, Keyon Hardin, appears in person and by his attorneys, Nathan Cho, Gina Chiala, and John Pipes of the Heartland Center for Jobs and Freedom, Inc. On September 25, 2023, Defendant made an oral motion for *Judgment Upon Facts and Law*. The Court gave Plaintiff ten days to respond to Defendant's written motion which was subsequently filed on October 10, 2023. Plaintiff filed a response and cross motion on October 20, 2023 to which Defendant filed a reply on October 25, 2023. On November 3<sup>rd</sup>, 2023, the Court made an oral pronouncement granting Defendant's *Motion for Judgment Upon Facts and Law*. However, prior to the Court issuing a written judgment, Plaintiff filed a *Motion to Reconsider* on November 7, 2023. The Court took the *Motion to Reconsider* under advisement, and on November 26, 2023, Defendant filed *Supplemental Suggestions in Opposition to Plaintiff's Motion to Reconsider*. On November 27, 2023, Plaintiff fled a *Reply to Defendant's Supplemental Suggestions in Opposition to Plaintiff's Motion to Reconsider*. On December 1, 2023, the Court granted *Defendant's Motion for Judgment Upon Facts and Law* consistent with its oral pronouncement of judgment on November 3, 3023.

On the 3<sup>rd</sup>, 8<sup>th</sup>, 14<sup>th</sup>, 21<sup>st</sup> days of November 2023, and the 1<sup>st</sup> day of December 2023, this cause came before this Court for trial on Defendant's counterclaims. Plaintiff, Quality Hill Apartments, L.P., appeared by and through their attorney, L. Donald Huelson. Defendant, Keyon Hardin, appeared in person and by his attorneys, Nathan Cho, Gina Chiala, and John Pipes of the Heartland Center for Jobs and Freedom, Inc.

Evidence was heard. The case was submitted to the Court upon the pleadings of record and the testimony and arguments of the parties on December 18, 2023. The Court took the matter under advisement. Having been fully advised in the premises, the Court makes the following findings of fact and conclusions of law and enters judgment in accordance therewith.

### **FINDINGS OF FACT**

1. Defendant (hereinafter Mr. Hardin) began renting an apartment unit from Plaintiff (hereinafter Quality Hill) at 905 Jefferson Street, Apartment 606, Kansas City, Missouri (hereinafter Apartment).
2. Mr. Hardin asserts that Quality Hill violated the warranty of habitability and the Missouri Merchandising Practices Act. Mr. Hardin sought compensation for rent he paid during the uninhabitable period and damages.
3. Mr. Hardin entered into a residential lease with Quality Hill with a lease term beginning on February 26, 2021 and ending at February 28, 2022.
4. Mr. Hardin entered into a subsequent lease with Quality Hill with a lease term beginning March 1, 2022 and ending on November 30, 2022.
5. Mr. Hardin entered into another subsequent lease with Quality Hill with a lease term beginning on December 1, 2022 and ending on November 30, 2023.
6. Mr. Hardin noticed roaches in his apartment shortly after he moved into the apartment.

7. The apartment was infested with roaches during the entirety of the tenancy such that Mr. Hardin was awakened by roaches crawling on him. The sleep interruption impacted Mr. Hardin's energy level and ability to work.
8. Mr. Hardin attempted to remediate the roach infestation by frequent use of pest control sprays products. He suffered chest pains as a result of the spray products.
9. Mr. Hardin has regularly thrown away food because of the roach infestation.
10. The apartment has poor plumbing that results in frequent leaks from the bathroom sink, kitchen sink and bathtub.
11. The apartment's bathtub does not drain properly and has frequent sewage discharge and water backup that prevented Mr. Hardin from regularly showering in the apartment. He resorted to showering at other locations.
12. The sewage odor permeates Mr. Hardin's apartment and has induced him to vomit.
13. In June 2021, the oven knobs were broken, and the oven leaked flammable gas. A maintenance worker provided Mr. Hardin with plyers, in lieu of knobs, to operate the oven. Furthermore, two of the four oven burners were operable. A maintenance worker advised Mr. Hardin that a new stove would be provided.
14. Quality Hill did not replace Mr. Hardin's stove until a few days before the start of trial.
15. Quality Hill cut a large hole in the wall surrounding the showerhead in the apartment. A large hole remains and the paint and drywall is breaking apart.
16. Air flow in the apartment was restricted because the ceiling fan was structurally unsound and the air conditioning unit broke shortly after Mr. Hardin moved in to the apartment. The replacement air conditioning unit does not cool the apartment

such that the apartment's temperature rose to approximately 89 degrees.

17. Mr. Hardin reported these issues, but only the stove was adequately repaired a few days prior to trial.
18. The lease instructs residents to submit written notice of request for repairs and services through the tenant portal or in writing and delivered to a Quality Hill representative.
19. Mr. Hardin successfully submitted one maintenance request through the portal. Said maintenance request was for the water back up in his tub. However, the tub was not repaired properly.
20. Mr. Hardin relied on the Quality Hill maintenance worker's instruction to forego future notifications through the portal and to instead notify the maintenance worker directly of maintenance and service requests.
21. Additionally, the resident portal was not consistently available to Mr. Hardin during the tenancy to allow him to submit maintenance requests.
22. Mr. Hardin's neighbor, Ms. Jones, provided credible testimony about her observations of a roach and mice infestation in her apartment. Ms. Jones testified that sometimes her maintenance requests were unresolved by Quality Hill. Her testimony demonstrates the overall condition of Quality Hill and the inadequacy of the landlord processing work orders.
23. A former day port at Quality Hill, Ms. Matthews, provided credible testimony about the insufficient maintenance and managerial leadership at Quality Hill. Ms. Matthews' testimony demonstrates the overall condition of Quality Hill and the lack of managerial response to tenants' maintenance requests.
24. The common areas at Quality Hill Apartments have been in a general state of disrepair

for at least three years – including leaks, flooding and roaches.

25. Mr. Hardin, other tenants, the media and Healthy Homes all provided Quality Hill with notice of the building's state of disrepair, including Mr. Hardin's apartment specifically.
26. Although Mr. Hardin re-signed his lease, he believed Quality Hill would resolve the maintenance problems. Thus, he did not consent to the poor maintenance issues.
27. Mr. Hardin acted reasonably by reporting the issues to the landlord, maintenance and by attempting to treat the roach infestation himself.
28. The fair market value of the home was zero during the duration of the tenancy.
29. Mr. Hardin paid rent in the amount of \$18, 867.00 from February 2021 through July 2023 during which time the home was unsafe and unsanitary, affecting his life, health and safety.
30. Mr. Hardin's attorney's fees of \$1000.00 are reasonable.

### **CONCLUSIONS OF LAW**

A "landlord impliedly warrants the habitability of leased residential property."

*Chiodani v. Fox* 207 S.W.3d 174, 176 (Mo. App. E.D. 2006) (citing *Detling v. Edelbrock*, 671 S.W.2d 265, 270 (Mo. 1984)). "Habitability is measured by community standards, reflected in most cases in local housing and property maintenance codes.." *Detling*, 671 S.W.2d at 270. Thus, evidence of a violation of a local ordinance or code violation, is not required for a successful claim for breach of implied warranty of habitability. Rather, the measurement is that of community standards. Local codes can provide evidence of community standards but they are not required or dispositive. *See Detling*, 671 S.W.3d at 271. A successful claim for breach of implied warranty of habitability requires proof that the condition of the premises was of such a nature as to render the premises 'unsafe or

unsanitary.”” *Kolb v. DeVille I Props., LLC*, 326 S.W.3d 896, 901 (Mo. App. W.D. 2010) (emphasis added) (citing *Moser v. Cline*, 214 S.W.3d 390, 394 (Mo. App. W.D. 2007)). The materiality of the breach will be determined by factors including the nature of the deficiency or defect, its effect on the life, health and safety of the tenant, the length of time it has persisted, and the age of the structure. *Moser*, 214 S.W.3d at 394 (citing *King v. Moorehead*, 495 S.W.2d 65, 76 (Mo. App. 1973)).

Evidence of a code violation is not an element for breach of implied warranty of habitability. Instead, the requisite elements for breach of implied warranty of habitability are: (1) entry into a residential lease; (2) the subsequent development of dangerous or unsanitary conditions on the premises materially affecting the life, health and safety of the tenant; (3) reasonable notice of the defects to the landlord; and (4) a subsequent failure to restore the premises to habitability. *Detling*, 671 S.W.2d at 270. (Mo. 1984) (citing *King v. Moorehead*, 495 S.W.2d 65, 76 (Mo. App. 1973)).

“Where there has been a material breach of implied warranty, the tenant’s damages are reasonably measured by the difference between the agreed rent and the fair rental value of the premises as they were during occupancy by the tenant in the unhealthful or unsafe condition.” *King v. Moorehead*, 495 S.W.2d 65, 76 (Mo. App. 1973). The fair rental value of leased premises with a roach infestation is zero. *See Kolb v. DeVille I Props., LLC*, 326 S.W.3d 896, 903 (Mo. App. W.D. 2010).

Mr. Hardin offered credible testimony and evidence to demonstrate Quality Hill’s breach of implied warranty of habitability. Mr. Hardin experienced dangerous and unsanitary conditions in his leased apartment. These conditions materially affected his ability to work, sleep and shower in his own home. These conditions also materially affected his health and safety. Quality Hill had reasonable notice of the defects throughout the course of Mr.

Hardin's tenancy and failed to restore the premises to habitability.

The Merchandising Practices Act (hereinafter "the Act") prohibits the "act, use or employment by any person of any deception, fraud, false pretense, false promise misrepresentation, unfair practice or concealment, suppression, or omission of any material fact in connection with the sale of any merchandise." §407.020 RSMo. Section 407.025 of the Missouri Revised Statute creates a private right of action for "any person who purchases or leases merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal" because of activity declared unlawful under §407.020 RSMo. The Act defines "real estate" as "merchandise. §407.010 RSMo.

Quality Hill violated the Act and engaged in unfair practices by renting a home infested with roaches, water leaks, plumbing problems, a hazardous oven, a large hole in the wall and inadequate air conditioning. Mr. Hardin acted reasonably by reporting the issues to the landlord and maintenance and by attempting to remediate the roach infestation. He suffered an ascertainable loss in that he paid rent for a property that did not have value and incurred out of pocket expenses for remediation efforts. Consequently, he should be awarded back rent under the warranty of habitability and the Merchandising Practices Act. He should also be awarded damages for out of pocket expenses incurred during his remediation efforts.

The Court therefore finds that Defendant is entitled to recover the rent \$18, 867.00 in rent for an apartment whose fair market value was zero; and \$200 for expenses incurred to remediate the infestation.

The Court further finds that Mr. Hardin's request for attorney's fees in the amount of \$1,000 is reasonable.

**IT IS THEREFORE ORDERED** that judgment is entered in favor of the Defendant with respect to Defendant's counterclaim against the Plaintiff.

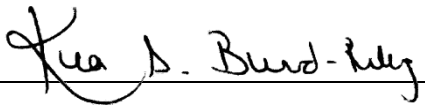
**IT IS FURTHER ORDERED** that Plaintiff shall pay the following damages to Defendant:

Damages	\$ 19,067
Attorney of Fee	\$ 1,000.00
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Total:	\$ 20,067.00

**IT IS FURTHER ORDERED** that should Plaintiff apply for trial de novo, the appeal bond is set in the amount of 19,067.00.

**IT IS SO ORDERED.**

Dated: July 27, 2024

  
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Judge Kea Bird-Riley

**Certificate of Service**

This is to certify that a copy of the foregoing was hand delivered/faxed/emailed/mailed and/or sent through the eFiling system to attorneys of record and on 29-Jul-2024

  
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Judicial Administrative Assistant/Law Clerk



