

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

<p>██████████,</p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p>v.</p> <p>████████████████████</p> <p style="text-align: center;"><b>Defendants.</b></p>	<p>)</p>	<p><b>Case No.</b> ██████████</p> <p><b>Division</b> █</p>
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**SMALL CLAIMS JUDGMENT**

Now on the 27<sup>th</sup> day of September, 2021 in addition to the 25<sup>th</sup> and 26<sup>th</sup> days of October, 2021, this matter came before the Court for Bench Trial. Plaintiff ██████████ appeared in person, pro se. Defendant ██████████ appeared in person, pro se and ██████████ appeared by counsel, ██████████. Plaintiff presented evidence in support of Plaintiff's position. Defendants/Counter-Claimants presented evidence in support of their position, and the Court took the matter under advisement. After reviewing all of the evidence presented during the course of the trial, the Court makes the following findings of fact and conclusions of law:

**I. RSMO 535.300(3)(5)(6)**

To establish a violation of RSMO 535.300(5), Plaintiff must prove that Defendants failed to adhere to the following statutory requirements: (1) give Plaintiff reasonable notice in writing at her last known address or in person of the date and time when the Defendants will inspect the dwelling unit following the termination of the rental agreement; (2) afford Plaintiff the right to be present at the inspection of the dwelling unit at the time and date scheduled by the landlord to determine the amount of the security deposit to be withheld, and (2) hold the inspection at a

reasonable time. *See* RSMo. § 535.300(5). Within thirty days after the termination of the tenancy, the landlord shall return the full amount of the security deposit; or furnish to the tenant a written itemized list of damages for which the security deposit or any portion thereof is withheld. *See* § RSMO. 535.300(3). Plaintiff shall be entitled to recover damages twice the amount wrongfully withheld. *See* RSMO. §535.300(6).

Plaintiff and Defendant both offered testimony and evidence that Defendant(s) conducted two inspections. The first inspection occurred on April 25, 2021, five days before the expiration of the tenancy. Although Defendants did not provide written notice of the inspection to Plaintiff's last known address, the Court finds the notice requirement for the first inspection met as said inspection occurred at a date and time requested by Plaintiff. Defendant, [REDACTED] conducted the first inspection. Defendant, [REDACTED] was also present in the home, but did not conduct the inspection. Defendant(s) did not provide Plaintiff an itemized list of damages subsequent to the first inspection. Additionally, Defendant, [REDACTED], communicated to Plaintiff that there did not appear to be, "anything major to be concerned about." Defendant, [REDACTED] conducted a second inspection after Plaintiff vacated the premises and returned the keys to Defendant(s). Defendant(s) did not provide reasonable written notice to Plaintiff of the date and time of the second inspection and thus did not afford Plaintiff an opportunity to be present during said inspection. Additionally, Defendant(s) did not provide Plaintiff an itemized list of damages for which the security deposit was being withheld within the statutory thirty day deadline. Instead, on June 9, 2021, more than 30 days after the termination of the tenancy, Defendant, [REDACTED] provided a two paragraph email with photos, and a general explanation of repairs.

Consequently, the Court finds in favor of Plaintiff and against Defendants on Plaintiff's petition.

## **II. Counter-Claim: Misrepresentation and Concealment:**

Counter-Claimants seeks damages for "misrepresentations and concealment". Counter-Claimants do not provide legal authority for their claims. The elements of fraud by misrepresentation claims are: (1) a representation; 2) its falsity; 3) its materiality; 4) the speaker's knowledge of the falsity or ignorance of its truth; 5) the speaker's intent that the representation be acted upon by the hearer; 6) the hearer's ignorance of the falsity of the representation; 7) the hearer's reliance on the truth of the representation; 8) the hearer's right to rely on the representation; 9) the hearer's consequent and proximate injury. *Charley v Fant*, 892 S.W.2d 811, (Mo. Ct. App. 1995). Counterclaimants argue that based on Plaintiff's representations that she obtained employment in another state, they waived the early termination provisions of the lease agreement. Plaintiff provided credible testimony and evidence of obtaining employment that would require her to relocate from Missouri. Plaintiff's evidence and testimony supports Plaintiff's assertion that she believed her new employer would relocate her outside of the state of Missouri. There was no evidence that Plaintiff willfully and consciously falsified her representation of moving out of state. Counterclaimants failed to prove otherwise. "When fraud is alleged, the burden of proof as to each element thereof falls upon the party asserting the fraud. Fraud is never presumed." *Gibson v. Smith*, 422 S.W.2d 321, 327 (Mo. 1968). Failure to prove any one of the requisite elements is fatal to a claim for fraud. *Schnuck v. Kriegshauser*, 371 S.W.2d 242 (Mo. 1963).

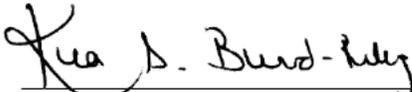
Counter-Claimants also assert a claim of fraudulent concealment. “The crux of a fraudulent concealment cause of action is that defendant, by his or her post-negligence conduct, affirmatively intends to conceal from plaintiff the fact that the plaintiff has a claim against the defendant.” *Roth v. Equitable Life Assur. Soc’y of the United States*, 210 S.W.3d 253 (Mo. 2006). Counter-Claimants failed to prove the requisite negligence elements therefore the Court cannot address the issue of fraudulent concealment. The Court finds in favor of Plaintiff and against Counter-Claimants. Counterclaimants take nothing.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that judgment is entered in favor of Plaintiff and Defendants jointly and severally for \$4800.00 plus costs.

**IT IS FURTHER ORDERED** that judgment is entered in favor of Plaintiff and against Counter-Claimants. Counter-Claimants take nothing.

**IT IS SO ORDERED.**

December 17, 2021  
DATE

  
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KEA BIRD-RILEY, JUDGE

**NOTICE**

**THE JUDGMENT RENDERED HEREIN WILL BE FINAL UNLESS AN APPLICATION FOR TRIAL DE NOVO IS FILED WITHIN TEN DAYS. AN APPLICATION FOR TRIAL DE NOVO WILL NOT STAY EXECUTION UNLESS THE TRIAL DE NOVO BOND IS FILED AS SET OUT IN SECTION 482.365 RSMo. (Rule 151.02 Missouri Rules of Civil Procedure).**

**Certificate of Service**

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