

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

TAHATA BROOKS)
and DESTANI MATTHEWS)
individually)
and on behalf of all)
others similarly situated)

Plaintiffs,)

v.)

Case No.

S.M.-T.E.H. REALTY 10, LLC.,)
NORTHWINDS APARTMENTS)
INVESTORS L.P., S.M.-T.E.H.)
NORTHWINDS LP.)

Serve:)

Division

S.M.-T.E.H. Realty 10, LLC)
Registered Agents, Inc.)
117 South Lexington Street, Ste, 100)
Harrisonville, MO 64701)

NORTHWINDS APARTMENTS)
INVESTORS L.P.)
9556 Glen Owen Drive)
St. Louis, MO 63136)

S.M.-T.E.H. NORTHWINDS L.P.)
Registered Agents, Inc.)
117 South Lexington Street, Ste, 100)
Harrisonville, MO 64701)

Defendants.)

**VERIFIED CLASS ACTION PETITION FOR BREACH OF CONTRACT,
TEMPORARY RESTRAINING ORDER, INJUNCTIVE RELIEF, SPECIFIC
PERFORMANCE OF THE CONTRACT, AND DECLARATORY JUDGMENT**

COMES NOW Plaintiffs, individually and on behalf of all others similarly situated, and for their Class Action Petition against Defendants states and alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiffs Tahata Brooks, Destani Matthews, (hereafter “Ms. Brooks” and “Ms. Matthews”) and members of the proposed class are all tenants living in various units at the Northwinds Apartments Complex in Ferguson, Missouri. Owned by Defendants, Northwinds Apartments is a large multi-family housing complex that spreads across several blocks in Ferguson.
2. While tenants at Northwinds Apartments, Plaintiffs have been plagued by unsafe and unsanitary living conditions that are the result of Defendants’ failure to maintain and repair the homes in the complex, as well as the apartment grounds. Plaintiffs’ hardships include, but are not limited to: ceiling collapse; flooding; mold growth; plumbing failure; water damage; compromised structural integrity of the home;

and unsafe passageways into and out of the home. Despite contractual guarantees that these types of issues would be remedied, Defendants have failed to make necessary repairs.
3. As a result of Defendants’ breach of their contractual duties, Plaintiffs, members of the proposed class, and their families have been subjected to unsafe and unsanitary living conditions. As such, Plaintiffs and members of the proposed class seek both declaratory and injunctive relief. First, Plaintiffs seek a judgment declaring Defendants’ actions unlawful. Second, Plaintiffs seek injunctive relief ordering Defendants to comply with their contractual obligations to provide safe, sanitary, and habitable housing for Plaintiffs and

members of the proposed class. Third, due to Defendants material breach of the written residential rental leases, Plaintiffs seek injunctive relief enjoining Defendants from collecting rent until the premises has been restored to habitable condition.

PARTIES AND JURISDICTION

4. Plaintiff Tahata Brooks and her 22-year-old son live at

pursuant to a written rental lease with Defendants. Due to a physical disability, Ms. Brooks cannot work and survives on a limited income. Because of this limited income, Ms. Brooks is unable to move from her home without an undue financial burden.
5. Plaintiff Destani Matthews and her two children—ages one and two—reside at

pursuant to a written rental lease with Defendants.

Ms. Matthews is an indigent mother relying on child support payments and food stamps to support her family. She has no additional means to immediately relocate housing due to her poverty.
6. Defendants collectively do business and advertise themselves to the public as T.E.H. Realty. On October 11, 2018, according to its website--www.tehrealty.com--T.E.H. Realty personally acquires and manages all of its properties, including Northwinds Apartments, through a centralized management structure.¹ **Exhibits 1 and 2.**
7. At Northwinds Apartments, T.E.H. Realty purports to do business through several individual companies. In particular, Defendant S.M.-T.E.H. Northwinds LP is the T.E.H. Realty company that operates as the investment arm of the business; S.M.-T.E.H. Northwinds LP acquired and now owns the multi-family housing complex known as

¹ At some time prior to the filing of this action, T.E.H. Realty removed all information of their website. The screengrabs of their prior website were archived by counsel for Plaintiffs prior to the filing of this action.

Northwinds Apartments. Defendant Northwinds Apartments Investors, LP is the T.E.H. Realty company that functions as the leasing agent and property manager for the multi-family housing complex known as Northwinds Apartments. Defendant S.M.-T.E.H. Realty 10, LLC is the T.E.H. Realty company that acts as an agent of the property management arm of the business and files eviction lawsuits on behalf of the company.

8. While they may be independent entities of formation, upon information and belief, these companies all operate under the centralized direction of T.E.H. Realty according to T.E.H. Realty's website and statements made to the media.² As such, each of the individually named Defendants are responsible for the contractual obligations of each written residential rental lease at the property.
9. All parties are in a landlord-tenant relationship pursuant to a written residential rental lease.
10. This Court has jurisdiction over this matter pursuant to § 478.070 RSMo.
11. Venue is proper in this matter because it involves real property located in St. Louis County. § 508.010 RSMo.

STATEMENT OF FACTS COMMON TO ALL COUNTS

12. This action is brought by Ms. Brooks and Ms. Matthews on behalf of themselves, individually, and a proposed class of persons that are currently being harmed by Defendants' failure to materially perform the terms of their residential rental leases with Plaintiffs.

² See https://www.stltoday.com/news/local/metro/hammered-by-complaints-t-e-h-realty-pledges-to-provide/article_f5e83330-80b6-5b52-b53d-cd1d1569cf0d.html#1 and https://www.stltoday.com/news/local/metro/confusion-reigns-at-ferguson-apartments-where-tenants-were-ordered-out/article_8ff7caa2-10d3-5eb4-b441-a52c901fbdec.html

13. Specifically, Defendants' flagrantly and repeatedly refused to comply with their contractual agreements; ensure that their apartments are habitable and fit for living; and/or provide facilities and services vital to the life, health, and safety of the Plaintiffs and other residential tenants.
14. When Defendants acquired the Northwinds Apartments property in April 2018 through S.M.-T.E.H. Northwinds, LP, they filed a series of mortgages, deeds, and an assumption of low-income housing tax credit land use restriction agreement with the St. Louis County Recorder of Deeds on April 4, 2018. As part of that purchase, Northwinds LP, through its general partner, S.M.-T.E.H. Realty 10, LLC, agreed to uphold the low-income housing tax credits obligations for the multi-family housing.
15. Plaintiffs and other members of the proposed class have entered into written residential rental leases with Defendants to rent residential housing at the Northwinds Apartments complex. Those written rental leases include specific contractual obligations on the part of Defendants to maintain the premises. **Exhibit 3.**
16. In particular, the written residential rental leases require Defendants to comply with applicable building and housing codes; maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and air conditioning in the common areas and apartments; provide and maintain for the common use by all residents, appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for the removal of such waste. **Exhibit 3.**

17. Further, all of the written residential rental leases contain an implied warranty of habitability. The implied warranty of habitability requires Defendants to ensure that apartments at Northwinds Apartments are habitable and fit for living as well as provide all facilities and services vital to the life, health, and safety of the residential tenant. *King v. Moorehead*, 495 S.W.2d 65, 75 (Mo. App. 1973).

The Unsafe and Unsanitary Conditions in Tahata Brooks' Home

18. Ms. Brooks has resided at Northwinds Apartments since April 2010.

19. Ms. Brooks has encountered various maintenance issues in her home throughout that time period.

20. Before Defendants purchased Northwinds Apartments, Ms. Brooks reports that her requests for maintenance were resolved in a prompt and timely manner.

21. In April 2019, Ms. Brooks signed a lease with Defendants allowing her to remain in her home of many years after Defendants acquired the apartment complex a year earlier, in April 2018.

22. In Fall 2018, a few months after Defendants acquired Northwinds Apartments, Ms. Brooks noticed a marked change in management's responsiveness to her maintenance requests.

23. Around October 2018, a floor drain in Ms. Brooks' basement stopped functioning. As a result of the faulty drain, dirty water pooled in her basement backing all the way up to her basement stairs. When Ms. Brooks noticed the standing water in her basement, she reported the problem by speaking directly with an on-site property manager at the management office.

24. After several months of making repeated complaints about the drain, management finally informed Ms. Brooks that they did not, in fact, have an on-site plumber at that time. When she asked to speak directly with the owner regarding the problem, management directed Ms. Brooks to contact the T.E.H. Realty office in Kansas City. However, the on-site property manager refused to provide Ms. Brooks with a phone number for T.E.H. Realty.
25. Undeterred, Ms. Brooks located a phone number for T.E.H. Realty online and attempted to get in touch with them. Ms. Brooks made repeated calls to the T.E.H. Realty phone number she located, but no one ever answered the phone. Ms. Brooks could not leave a voicemail because the voicemail box was full.
26. In September 2019, after nearly a year of making repeated in-person requests to management to have her drain fixed, Defendants finally repaired the drain in Ms. Brooks' basement. After the repair was completed, Defendants failed to clean or sanitize any of the sewage that was standing in the basement. Ms. Brooks is forced to navigate around the sewage in her basement when she uses her washer and dryer in the home. **Exhibits 4 and 5.**
27. Despite fixing the drain, Ms. Brooks still has water in her basement. When it rains, water seeps through cracks in the foundation of the wall under her front door. At this time, the water has led to mold growth on the walls in her basement. **Exhibits 6, 7, and 8.**
28. During summer 2019, while awaiting repairs for the standing water in her basement, Ms. Brooks also noticed substantial cracks running along her kitchen ceiling. Ms. Brooks personally notified on-site management about the cracks on her ceiling.

29. In early August 2019, the light fixture in Ms. Brooks' kitchen became detached from the ceiling. **Exhibits 9 and 10.** Ms. Brooks again informed management of the problem and indicated that she feared her ceiling might collapse.
30. On August 8, 2019, Ms. Brooks' kitchen ceiling caved in and debris and insulation covered her kitchen cabinets, stove, counter, refrigerator, and floor. **Exhibits 11, 12, and 13.**
31. Although a two-person maintenance crew happened to be at Ms. Brooks' apartment to inspect the ceiling when it caved in, repairs to Ms. Brooks' ceiling did not begin until the second week of October. Moreover, the repairs to the ceiling remain incomplete at this time.
32. The kitchen ceiling collapse has severely impacted Ms. Brooks' life, health, and safety. As a result of the collapse, Ms. Brooks has been functionally unable to use her kitchen. Ms. Brooks had to relocate her microwave and other cooking materials into the living room where she is now forced to prepare and eat her meals. **Exhibit 14.** Unable to safely use her kitchen stove, she also had to purchase a hot plate, which she also uses to cook in her living room. **Exhibit 15.** After finding insulation from the ceiling in her cabinets and refrigerator, and in order to keep her food safe from insulation and debris that continues to fall from her ceiling, Ms. Brooks now stores her food in her living room as well. **Exhibit 16.**
33. Ms. Brooks' kitchen ceiling is still not fixed. Her ceiling is covered in holes and patches where the repairs remain incomplete. **Exhibits 17, 18, 19, 20, and 21.** Debris from the collapsed ceiling continue to cover her kitchen cabinets, stove, counter, refrigerator, and floor. **Exhibit 22.** Ms. Brooks is still forced to store, prepare, and eat meals in her living room.

34. The problems with Ms. Brooks' ceiling are not limited to her kitchen. In Ms. Brooks' bathroom, a large crack runs across the length of the ceiling. The ceiling sags along the crack, which causes Ms. Brooks to fear that, like her kitchen ceiling, it too will collapse. **Exhibits 23 and 24.**
35. In addition to the extensive cracks in Ms. Brooks' kitchen and bathroom, there are also substantial cracks in the ceiling in Ms. Brooks' entryway (**Exhibits 25 and 26**), living room (**Exhibit 27**), and rear entrance (**Exhibits 28 and 29**).
36. Ms. Brooks has repeatedly alerted management and/or maintenance about her cracked and sagging ceiling to no avail. Despite her consistent complaints and putting Defendants on notice about the possibility of another ceiling collapse, Defendants have failed to inspect and repair the numerous cracks in Ms. Brooks' ceiling.
37. In addition to the problems with her ceiling, Ms. Brooks also has grave concerns about the structural integrity of her floors. A large crack runs across nearly the entirety of her kitchen floor into her bathroom, which is located adjacent to the kitchen. **Exhibits 30, 31, and 32.** When Ms. Brooks steps near the crack, she can feel the floor giving below her.
38. Ms. Brooks also worries about the safety of her bathroom. A wooden cabinet with glass mirrors hangs precariously above her bathroom sink. Ms. Brooks is concerned that at any time the cabinet might fall and shatter, potentially causing serious injury. This limits her ability to use the only bathroom in her home. **Exhibit 33.**
39. Despite making complaints and showing maintenance her cracked floor and broken cabinet, her floor and cabinet remain unrepaired.

40. The unsafe and unsanitary living conditions in Ms. Brooks' apartment have severely impacted her life and frustrated her ability to enjoy her home. Because of the problems with her ceiling, Ms. Brooks effectively has no kitchen. Because of the problems with her sagging bathroom ceiling and hanging cabinet, she is afraid to use her only bathroom. Because of the large cracks running across her floors, she worries about the structural integrity and safety of her home.

41. Despite feeling unsafe and being unable to enjoy her home, Ms. Brooks has always fulfilled her obligations under her residential rental lease by making full, monthly rental payments.

The Unsafe and Unsanitary Conditions in Destani Matthews' Home

42. Ms. Matthews moved into Northwinds Apartments in January 2018. In May 2019, she signed a written lease with Defendant Northwinds Apartments Investors, LP. **Exhibit 3.**

43. Shortly after moving into the home, Ms. Matthews began having maintenance issues that were beyond her control.

44. In approximately April 2018, Ms. Matthews noticed flooding in her basement. Despite telling on-site property management, Defendants have not fixed the basement flooding. Instead, Ms. Matthews is forced to cover the floor with plastic sheets to keep her belongings from being destroyed and to keep the area more sanitary than allowing standing water to remain in her home. **Exhibits 34, 35, 36, and 37.**

45. In approximately June 2018, neighborhood children broke Ms. Matthews' window when they threw a rock through it. Despite reporting the problem, the window remained unrepaired for six months.

46. In an effort to provide Defendants additional notice beyond her repeated in-person requests, Ms. Matthews hand-delivered a written note on May 26, 2019 notifying Defendants of the flooding in her basement, as well as about problems with her garbage disposal, air circulation in the home, and clogged gutters. **Exhibit 38.**

47. In addition to these problems, Ms. Matthews' dishwasher does not function properly. Her dishwasher clogs on a consistent basis and creates an unbearable smell of sewage throughout her home. As a result of the repeated clogs, a layer of residue covers the interior of the dishwasher. **Exhibit 39.**

48. Ms. Matthews' home has numerous cracks along the ceiling. Many of the cracks have begun sagging and indicate structural problems with the ceiling. **Exhibit 40.**

49. Ms. Matthews' home also does not have proper drainage. When it rains, water pours down from the roof immediately above her front entrance, making it unsafe for her to enter and exit her home. **Exhibit 41.**

50.

51. Perhaps most dangerous is the dead tree outside of Ms. Matthews' rear entrance. In July 2019, a portion of the tree fell just outside of her rear entrance. The large tree branch remains on her back doorstep, impeding her ability to safely enter and exit her home. **Exhibits 43 and 44.** The standing portion of the tree continues to pose serious injury risk.

The tree trunk is leaning against Ms. Matthews' home, causing a dent in her roof. **Exhibit 45.** In addition, a large, dead tree branch hangs precariously from the top of the tree above her rear entrance, threatening to fall at any moment. **Exhibit 46.** Ms. Matthews lives in fear that the tree will collapse on her home.

52. In July 2019, Ms. Matthews also requested that maintenance examine her kitchen ceiling fan. Ms. Matthews was concerned because the globe covering her light fixture became detached. Despite her request, maintenance did not come to fix the problem. As a result of Defendants' inaction, the globe completely dislodged and fell on Ms. Matthews' grandmother's head. **Exhibits 47 and 48.** Ms. Matthews was forced to use the fan, even in its partially broken state, because of the unrepaired problems with her air conditioning system.

53. For the entirety of her tenancy, Ms. Matthews has made maintenance requests regarding the above issues. Nevertheless, they remain unrepaired and a safety hazard to Ms. Matthews and her two adolescent children. Ms. Matthews kept a detailed log of her interactions with Defendants for her records. **Exhibit 38.**

54. Ms. Matthews performed her obligations under the contract by making monthly rental payments until her landlord materially breached the contract by failing to maintain the home.

The Unsafe and Unsanitary Conditions in the Proposed Class' Homes

55. The problems with the habitability of the Northwinds Apartments have been extensively covered in local news media. These reports demonstrate that many tenants at Northwinds Apartments suffer similar problems to those that Plaintiffs Brooks and Matthews endure:

- a. Just after Christmas last year, St. Louis Public Radio detailed the story of a Northwinds Apartments resident dealing with mold, malfunctioning appliances, and leaking ceilings. Ashley Lisenby, *Water leaks, defective porches among inspection findings at Ferguson apartment complex*, St. Louis Public Radio, <https://news.stlpublicradio.org/post/water-leaks-defective-porches-among-inspection-findings-ferguson-apartment-complex#stream/0>, last visited October 1, 2019.
- b. In May of this year, a news story featuring a Northwinds Apartments resident aired on TV station KMOV detailing the story of a woman whose ceiling had collapsed in her unit at the complex. Ashli Lincoln, *Woman says neglect by management caused apartment ceiling to fall on her head*, KMOV, https://www.kmov.com/news/woman-says-neglect-by-management-caused-apartment-ceiling-to-fall/article_a30b101e-7789-11e9-8c85-07f1fd6c0c69.html, last visited October 1, 2019.
- c. Just last month, on September 11, 2019, the St. Louis Post-Dispatch reported the Housing Authority of St. Louis County (HASLC) suspended all federal rental subsidies to T.E.H. Realty properties due to the conditions present at the properties. Jesse Bogan, *St. Louis County housing officials sever ties with T.E.H. Realty*, St. Louis Post-Dispatch, https://www.stltoday.com/news/local/metro/st-louis-county-housing-officials-sever-ties-with-t-e/article_da5059aa-210b-5632-a40f-2ef7edb8199e.html, last visited October 1, 2019. Upon information and belief,

Northwinds Apartments is one of the properties to which HASLC has stopped providing rental subsidies.

56. Ms. Brooks and Ms. Matthews can also attest to the unsafe and unsanitary conditions that plague the Northwinds Apartments. On a daily basis they notice issues affecting their neighbors, including dilapidated building exteriors, broken windows, , and unsafe common areas.

The Harm to Plaintiffs and the Members of the Proposed Class

57. Plaintiffs and the members of the proposed class have been substantially impaired from using their homes as safe and sanitary rental homes.

58. Plaintiffs and the members of the proposed class live in fear of being displaced from their homes due to the deplorable conditions that have occurred as a result of Defendants' neglect of their property and disregard for the safety of the tenants at Northwinds Apartments.

59. Plaintiffs and the members of the proposed class have had their lives significantly impacted by the conditions that exist inside their homes.

60. Plaintiffs and the members of the proposed class are facing the immediate and irreparable harm of losing their homes due to constructive eviction and/or the destruction of their personal property as a result of Defendants' neglect in maintaining the property pursuant to its contractual obligations.

61. Plaintiffs and members of the proposed class have no adequate remedy at law to prevent Defendants from continuing with their unlawful actions and no adequate remedy at law to compel Defendants to repair their homes.

62. The public interest of those renting residential housing and the greater St. Louis County community will be served by granting the relief sought in this action.

CLASS ACTION ALLEGATIONS

63. Plaintiffs bring this action on behalf of themselves and on behalf of a class which is defined as:

All persons who are currently leasing residential rental property at Northwinds Apartments in Ferguson, Missouri pursuant to a lease that provides that the owner will maintain the property and includes an implied warranty of habitability. Excluded from the Class are employees of S.M.-T.E.H. Realty 10, LLC, Northwinds Apartments Investors LP, and SM- T.E.H. Northwinds LP, and their officers and directors, and any Judge presiding over this action.

64. The members of the proposed class are believed to comprise many current tenants of the Northwinds Apartments, the joinder of whom is impracticable both because of their numbers and because they are spread out across several blocks in the City of Ferguson.

65. Upon information and belief, Plaintiffs estimate that there are over 200 members in the proposed class. The precise number of proposed class members can be obtained from information and records in Defendants' possession and control and/or from other sources.

66. A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action.

67. The relief sought by Plaintiffs and members of the proposed class is equitable rather than financial restitution. It would be impracticable for each of the proposed class members to individually litigate their claims and seek equitable relief from Defendants' wrongful conduct.

68. Class treatment will provide a substantial benefit to both the parties and the court system, as individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. In contrast, a class action suit presents far fewer management difficulties and provides the benefits of single adjudication and comprehensive supervision by a single court.
69. A well-defined commonality of interest in the questions of law and fact involved affects all Plaintiffs and proposed members of the class. Common questions of law and fact, which may be certified as issues, include:
- a. Whether Defendants' residential lease agreements with Plaintiffs and the proposed class contained promises that Defendants have an obligation to maintain and repair the homes at Northwinds Apartments;
 - b. Whether Defendants' residential lease agreements with Plaintiffs and the proposed class contain an implied warranty that Defendant will deliver safe and sanitary homes at Northwinds Apartments;
 - c. Whether Defendants' residential lease agreements with Plaintiffs and the proposed class are lawful;
 - d. Whether Defendants materially breached the residential lease agreements by failing to perform their obligation to provide safe and sanitary homes;
 - e. Whether Plaintiffs and the proposed class are entitled to injunctive relief or other equitable relief; and
 - f. Whether Plaintiffs and the proposed class are entitled to recover their costs and expenses incurred herein, including reasonable attorneys' fees.

70. Plaintiffs will fairly and adequately represent and protect the interests of the proposed class.
- Plaintiffs do not have any interests antagonistic to those of the class.
71. Plaintiffs have retained competent and experienced counsel in the prosecution of this type of litigation.
72. The questions of law and fact common to the members of the class, some of which are set out above, predominate over any questions affecting only individual members of the proposed class.
73. The resolution of common questions in this case will resolve the claims of both Plaintiffs and the members of the proposed class.
74. Unless a class is certified, Defendants will continue its business practices of not repairing rental homes at Northwinds Apartments and continue to provide uninhabitable residential rental homes to Plaintiffs and the proposed class members. Unless a class-wide injunction is issued, Defendants will continue to commit violations against current and future tenants.
75. This action is maintainable as a class action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure.

COUNT I: BREACH OF CONTRACT
(Breach of Rental Lease)

76. Plaintiffs reincorporate the foregoing paragraphs of this Petition all as if fully set forth herein.
77. In Missouri, a party proves a breach of contract allegation requiring specific performance by showing:
- a. the existence and terms of a contract;

- b. the defendant's breach of that contract;
- c. the performance or tendered performance by the plaintiff; and
- d. damages suffered by the plaintiff.

Keveney v. Missouri Military Academy, 304 S.W.3d 98, 104 (Mo. en banc. 2010) (citing *Howe v. ALD Servcs., Inc.*, 941 S.W.2d 645, 650 (Mo. Ct. App. 1997)).

78. It is well established in Missouri that written residential rental leases are binding and enforceable agreements between Plaintiffs and Defendants. *King v. Moorehead*, 495 S.W.2d 65, 75 (Mo. App. 1973). Thus, there is a contract between the parties and the first element is met.

79. The second element is met because the Defendants have materially breached the contract between themselves and Plaintiffs. A breach of contract is material if the breach relates to a vital provision of the agreement that goes to the substance or root of the agreement. *G & J Holdings, LLC v. SM Properties, LP*, 391 S.W.3d 895, 903 (Mo. Ct. App. 2013). Here, the residential rental leases signed by Plaintiffs and Defendants contains, among other provisions, the following clauses:

Owner Duties: Except where prevented by an Act of God, the failure of public utility services or other conditions beyond the Owner's control, the Owner shall:

- (A) Comply with the requirement of applicable building and housing codes materially affecting healthy and safety and if the duty imposed by this paragraph is greater than any duty imposed by any other paragraph of this subsection, the Owner's duty shall be determined in accordance with the provisions of this paragraph;
- (B) Exercise reasonable care in the maintenance of the common areas;
- (C) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning equipment and appliances, including elevators, supplied or required to be supplied by such Owner; and
- (D) Except where provided by a governmental entity, provide and maintain on the grounds, for the common use by all Residents, appropriate

receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the removal of such waste.

80. Defendants materially breached the rental lease by failing and refusing to remediate the unsafe and unsanitary conditions at Northwinds Apartments. Such breaches include, but are not limited to:

- a. Failing to repair the floor drain and address the flooding in Ms. Brooks' basement from October 2018 to September 2019;
- b. Failing to remediate and sanitize the excess sewage that remained after the floor drain was repaired;
- c. Failing to seal Ms. Brooks' front basement wall, which has led to standing water and mold growth in her basement;
- d. Failing to promptly address and repair the cracks in Ms. Brooks' kitchen ceiling, which ultimately led to its collapse;
- e. Failing to begin repairs upon Ms. Brooks' collapsed kitchen ceiling for nearly two months following the collapse;
- f. Failing to adequately repair Ms. Brooks' kitchen ceiling, leaving the ceiling unfinished to this date, months after it initially collapsed;
- g. Failing to clean the debris and insulation covering Ms. Brooks' kitchen as a result of the collapsed kitchen ceiling;
- h. Failing to inspect and repair the cracked and sagging ceiling in Ms. Brooks' bathroom;
- i. Failing to inspect and repair the cracks on the ceiling in Ms. Brooks' entryway, living room, and rear entrance;
- j. Failing to investigate and ultimately address the underlying structural issues causing Ms. Brooks' ceiling to crack and sag throughout her household;
- k. Failing to inspect and repair the large crack running across Ms. Brooks' kitchen floor;
- l. Failing to inspect and repair the cracks running across Ms. Brooks' bathroom floor;
- m. Failing to inspect and repair the bathroom cabinet that is falling off of the bathroom wall and hangs precariously above Ms. Brooks' bathroom sink;
- n. Failing to address the flooding in Ms. Matthews' basement that still remains to this day;
- o. Failing to replace a broken window in Ms. Matthews' apartment for six months;
- p. Failing to repair the dishwasher in Ms. Matthews' apartment, which regularly clogs, resulting in an unbearable smell of sewage throughout the home;

- q. Failing to repair the sagging ceiling cracks throughout Ms. Matthews' home;
 - r. Failing to provide Ms. Matthews' with safe entry and exit from the front of her home due to improper drainage that results in water pouring over her front doorway;
 - s.
 - t. Failing to remove the dead tree that is leaning against Ms. Matthews' roof;
 - u. Failing to remove dead tree branches that hang precariously above Ms. Matthews' back door;
 - v. Failing to remove the dead tree branches that fell on Ms. Matthews' back steps and therefore provide Ms. Matthews' with safe entry and exit from her back door;
 - w. Upon information and belief, the other apartments in the Northwinds Apartments suffer from similarly egregious conditions that Defendants have refused or failed to remedy.
81. Plaintiffs made monthly rental payments despite the unsafe and unsanitary conditions they endured. Ms. Brooks has made her rental payments every month of her tenancy. Ms. Matthews made her rental payments for the first sixteen months of her tenancy and only began withholding rent once it became clear Defendants' did not intend to fulfill their contractual obligations. As such, Plaintiffs have performed their contractual obligations despite Defendants' material breach.
82. Missouri law clearly establishes that the party who is first to materially breach a contract is thereafter denied any further benefit from the terms of that contract. *Guengerich v. Barker*, 423 S.W.3d 331, 339 (Mo. Ct. App. S.D. 2014); *Matt Miller Co., Inc. v. Taylor–Martin Holdings, LLC*, 393 S.W.3d 68, 88 (Mo. Ct. App. 2012); *Barnett v. Davis*, 335 S.W.3d 110, 112 (Mo. Ct. App. 2011). Thus, Defendants' breach of their contractual obligation relieved Plaintiffs of their duty to pay any subsequent rent until their homes are restored to a state consistent with the terms of the contract.

83. In Missouri, contractual remedies are available to tenants whenever a provision of a lease agreement is breached because residential leases are considered both a conveyance *and* a contract. *Wetherbee, Ltd. v. Allred*, 969 S.W.2d 756, 758 (Mo. Ct. App. W.D. 1998) (emphasis added). As such, all of the usual contract remedies are available to the tenant, including damages and reformation or rescission of the contract. *Id.*
84. Here, Defendants materially breached numerous provisions of the lease agreements entered into with Plaintiffs. Thus, Plaintiffs seek the contract remedy of specific performance of their residential rental lease. In particular, Plaintiffs ask the Court to order Defendants to make all repairs to the Northwinds apartment complex necessary to bring the property into compliance with the terms of the contract so that they can enjoy the benefits of the contract which they entered.

COUNT II: BREACH OF CONTRACT
(Breach of Implied Warranty of Habitability)

85. Plaintiffs reincorporate the foregoing paragraphs of this Petition all as if fully set forth herein.
86. All residential rental leases in Missouri contain an implied warranty of habitability that the landlord will provide a home that is safe and sanitary. *Moser v. Cline*, 214 S.W.3d 390, 394 (Mo. Ct. App. 2007) (quoting *Detling v. Edelbrock*, 671 S.W.2d 265, 270 (Mo. banc 1984), *abrogated on other grounds by Green v. City of St. Louis*, 870 S.W.2d 794 (Mo. banc 1994)).
87. Missouri law states that:

[I]n every residential lease there be an implied warranty by the landlord that the dwelling is habitable and fit for living at the inception of the term and that it will remain so during the entire term.

The warranty of the landlord is that he will provide facilities and services vital to the life, health and safety of the tenant and to the use of the premises for residential purposes.

King v. Moorehead, 495 S.W.2d 65, 75 (Mo. App. 1973); *Moser*, 214 S.W.3d at 394.

88. To prove a breach of the implied warranty of habitability, Plaintiffs must show:

- a. entry into a lease for residential property;
- b. the subsequent development of dangerous or unsanitary conditions on the premises materially affecting the life, health, and safety of the tenant;
- c. reasonable notice of the defects to the landlord; and
- d. subsequent failure to restore the premises to habitability.

Detling v. Edelbrock, 671 S.W.2d 265, 270 (Mo. banc 1984) (abrogated on other grounds by *Kohner Properties, Inc. v. Johnson*, 553 S.W.3d 280, 281 (Mo. banc 2018)).

89. Ms. Brooks and Ms. Matthews entered into lease agreements with Defendants, and the first element is therefore met.

90. As described above in paragraph 80, and re-incorporated herein, there are multiple dangerous and unsanitary conditions at Northwinds Apartments that materially affect the life, health, and safety of Plaintiffs. Such conditions include, but are not limited to: compromised structural integrity, ceiling collapse, unsafe entrances, defective plumbing, flooding, and water damage.

91. Both Ms. Brooks and Ms. Matthews provided notice of the unsanitary and unsafe conditions in their homes to Defendants, who have either refused or failed to remedy them.

92. Thus, Defendants breached the implied warranty of habitability by failing and refusing on an ongoing basis to provide a home that is safe and sanitary and which does not negatively affect the life, health, and safety of Plaintiffs.

93. As a direct result of Defendants' breaches of the implied warranty of habitability, Defendants have impaired and destroyed any fair rental value of the Northwinds Apartments, rendering the premises unfit and unsafe for rental housing.

94. When a landlord breaches the implied warranty of habitability, a tenant is relieved of his or her duty to perform the obligations under the residential rental lease until habitability has been restored. *King v. Moorehead*, 495 S.W.2d 65, 77 (Mo. App. 1973). Thus, Plaintiffs ask the Court enter an order requiring Defendants to repair the apartments to habitable condition and enjoining Defendants from collecting any rent until such time as those repairs are complete.

WHEREFORE, Plaintiffs pray for the following relief:

- A. This Court enter an Order certifying the Class under Mo. Sup. Ct. R. 52.08 and appointing Plaintiffs and their counsel to represent the Class;
- B. This Court enter an immediate Temporary Restraining Order restraining Defendants from continuing to charge rent to Plaintiffs and members of the proposed class until Defendants have remedied all of the material defects with the homes that are affecting life, health, and safety of the occupants;
- C. This Court enter a Preliminary Order enjoining Defendants to repair all the material defects in Plaintiffs' and class members' homes at Northwinds Apartments that affect the life, health, and safety of tenants;

- D. This Court enter a Permanent Order enjoining Defendants from collecting or attempting to collect any unpaid rent owed by Plaintiffs or class members from April 2018 until such time as Defendants perform all of their explicit and implied obligations under the written residential leases entered into with Plaintiffs and Class members;
- E. This Court enter Declaratory Judgment establishing that the Defendants collectively-- under the umbrella of a fictitious company, T.E.H. Realty--have failed to maintain Northwinds Apartments in a safe and sanitary manner, and that this failure has affected the life, health, and safety of the current tenants residing there;
- F. An award of attorneys' fees and costs; and
- G. Any such other and further relief as the Court deems just and proper.

Date: October 22, 2019

Respectfully Submitted,

ARCHCITY DEFENDERS, INC.

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