

**IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI  
ASSOCIATE DIVISION**

WC REAL ESTATE, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	
d/b/a PRIME VAPOR, et al.,	)	
	)	
	)	
Defendants.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
JUDGMENT**

This matter proceed to trial before the Court on September 21, 2017. Plaintiff appeared by its representative, J.W. (later substituted by S.C.), and its attorney, B.G. Defendants appeared in person and by their attorney P.S. A request for Findings of Fact and Conclusions of Law pursuant to Rule 73.01(c) was timely made by the Defendants.

Plaintiff alleged in its Petition Defendants leased a commercial storefront space owned by the Plaintiff and certain amounts remain due and owing according to the lease. Defendant filed affirmative defenses to said claim. Evidence and testimony was received at the time of trial

All findings of fact, unless otherwise stated, should be considered to have been made in support of the Court’s Judgment. In addition, the Court heard the testimony of witnesses and considered the application of other evidence. Unless specifically stated, all determinations of the credibility of witnesses are made as consistent with the Judgment.

**FINDINGS OF FACT**

1. Plaintiff is a corporation authorized to operate by the State of Missouri.
2. Plaintiff is the owner of commercial property located at ,  
Springfield, Missouri.

3. Defendants entered into a written Lease Agreement dated March 30, 2015 for said property.

4. Defendant L.W. is the grandmother of Defendant M.W.

5. Defendants reside in Greene County, Missouri, and said Lease was executed in Greene County, Missouri. As such, venue and jurisdiction are proper in Greene County, Missouri.

6. Defendants were doing business as P.V. and used the property as a storefront to sell products related to the vapor industry.

7. Said Lease Agreement, by its terms, began April 1, 2015 and ended March 31, 2016. The Lease contained an option to renew that was not exercised.

8. After March 31, 2016, by operation of the Lease, the Defendants became month-to-month tenants.

9. J.W. testified that in August of 2016 he received a notice from City Utilities the utilities were in danger of being shut off to the space leased by P.V.

10. J.W. contacted Defendant M.W. and they agreed he would move out at the end of September.

11. Defendants failed to pay rent for September.

12. Neither party provided the other written notice of termination as required by the Lease and §441.060 RSMo.

13. The court finds the parties agreed the tenancy would end at the end of September 2016.

14. Plaintiff began advertising for a new tenant after the meeting with Defendant M.W.

15. On September 23, 2016, Plaintiff entered into a Lease Agreement with MHE, Inc. d/b/a Fish Fin-Atic, hereinafter referred to as "Fish Fin-Atic Lease").

16. The Fish Fin-Atic Lease had an initial term beginning November 1, 2016 through October 31, 2017.

17. Defendant M.W. testified he was out of premises by September 28, 2016. The Court found his testimony particularly credible on this issue.

18. Defendant M.W. testified he was negotiating with the owner of Fish Fin-Atic on the potential purchase of some of the store fixtures, but that an agreement was never reached.

19. Fish Fin-Atic's Facebook post on October 9, 2016 stated in part, "Starting to look like a fish store again" along with a photograph of the tanks in the Plaintiff's building. The Court finds this evidence particularly credible and compelling that Fish Fin-Atic had taken possession of the premise at least by that weekend.

20. J.W. testified he had no objection to Fish Fin-Atic organizing the property in October, but they did not pay rent until November.

21. Defendant M.W. testified during his tenancy he contracted for signage and first placed his sign in the only available location on the pole sign as evidenced by photographs of the signage. Defendant M.W. admitted he did not obtain prior approval of the design of the signage before it was installed. He further testified the existing signage had the older slats for plastic alpha-numeric squares to be used. He paid for the update to new acrylic faces, new ballast and lamps.

22. Both J.W. and M.W. testified the pole signs were moved to different locations on the pole at a later date. Defendant testified it was approximately 5-6 months after the original signage was placed. Both parties testified they paid for the signage to be moved. Defendant M.W. testified the original pole sign had a loan company at the top and J.W. wanted the coffee shop to be at the top to avoid any stigma of the loan company being featured. This testimony is consistent with the photos received. Defendants were invoiced on February 2, 2016 and paid on February 18, 2016 for two vinyl black covers when the signage was moved. No invoice was produced by the Plaintiff showing any payments Plaintiff made for the relocation of the pole signs.

23. Plaintiff invoiced M.W. for Sign Maintenance on October 28, 2016, and December 15, 2016. However, those invoices listed Fish Fin-Atic as the customer. In fact, the statement for \$646.34 bears the fax stamp showing it was faxed from "fishfinatics." J.W. testified that he "put some thought in it" and \$700 "seemed like a reasonable amount." On re-direct he again testified he told his staff to bill the Defendants \$700.00. In accordance with his testimony, the December 15, 2016, Invoice to M.W. shows the charge for \$646.34 noted above, with an additional Administrative Expenses charge of \$53.66 that allows the invoice to equal \$700.00.

24. The Court finds Defendant M.W.'s testimony more credible on all issues regarding the pole sign.

25. Regarding the building sign above the entrance door, Defendant M.W. admitted he removed the metal sign above the door. The Court finds the cost to replace the metal panel was \$100.00 and is attributable to the Defendants.

26. Defendant J.W. admitted he owed Plaintiff \$133.23 for trash and sign utilities. He also did not pay September rent of \$1,200.00. As such, Defendant also is responsible for \$150.00 late fee for September per the Lease.

27. On December 15, 2016, Plaintiff gave Defendants a credit of \$1,200.00 for the return of the security deposit.

### CONCLUSIONS OF LAW

To establish a prima facie case, a plaintiff must establish the existence of a valid lease, mutual obligations arising under the lease, that defendant did not perform, and that plaintiff was thereby damaged by the breach. *Rice v. W. End Motors, Co.*, 905 S.W.2d 541, 542 (Mo.App.1995). A party claiming damages for breach must prove their existence and amount with reasonable certainty. *Delgado v. Mitchell*, 55 S.W.3d 508, 512 (Mo.App.2001). “Proof of actual facts which present a basis for a rational estimate of damages without resorting to speculation is required.” *Id.*

To reach its determination, the Court weighed the credibility of the witnesses, the weight to be given their testimony, and the evidence introduced by both parties to this Court. In a judge-tried case, credibility of the witnesses and the weight given to their testimony are matters for the judge to decide. *Miller v. Secura Ins. And Mut Co. of Wisconsin*, 53 S.W. 3d 152, 159 (Mo.App. W.D 2001).

**WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that judgment is entered in favor of plaintiff and against defendants in the amount of \$383.23, with each party to bear their own court costs and attorney fees. Post-Judgement interest shall accrue at 9 percent per annum.

Entered this 3<sup>rd</sup> day of October, 2017.

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Judge Becky J.W. Borthwick  
Division 25