

**CASE FILE**  
**MARTIN v. SMITH**

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## Chronology

February 27, 20XX-1	Martin shows house to Smith. G. James present.
March 1, 20XX-1	Smith pays rent; moves in house
October 20XX-1	Smith kids taken to Juvenile Hall
December 20XX-1	Smith kid taken to Juvenile Hall
January 20XX	Smith hires J. May to take care of kids
June 30 - July 2	Smith talks to TRO people
July 1, 20XX	Smith sends letter to Martin saying she will not pay any more rent.
July 3, 20XX	Martin sends letter to Smith asking her to pay rent.
July 7 - 21, 20XX	Smith contacts Bloom County Department of Health Services Martin sends a plumber to the house
July 22-26, 20XX	Hatcher investigates Ninth Street, finds violations.
July 30, 20XX	Report of Hatcher to Martin in the mail.
August 1, 20XX	Smith calls plumber - replace pipe underneath toilet.
August 3, 20XX	Martin serves 3 day notice
August 9, 20XX	Martin serves complaint

**§103 Retaliatory Evictions**

A landlord may not evict a tenant solely to retaliate against the tenant for reporting health and safety violations on the rental premises to health or safety authorities.

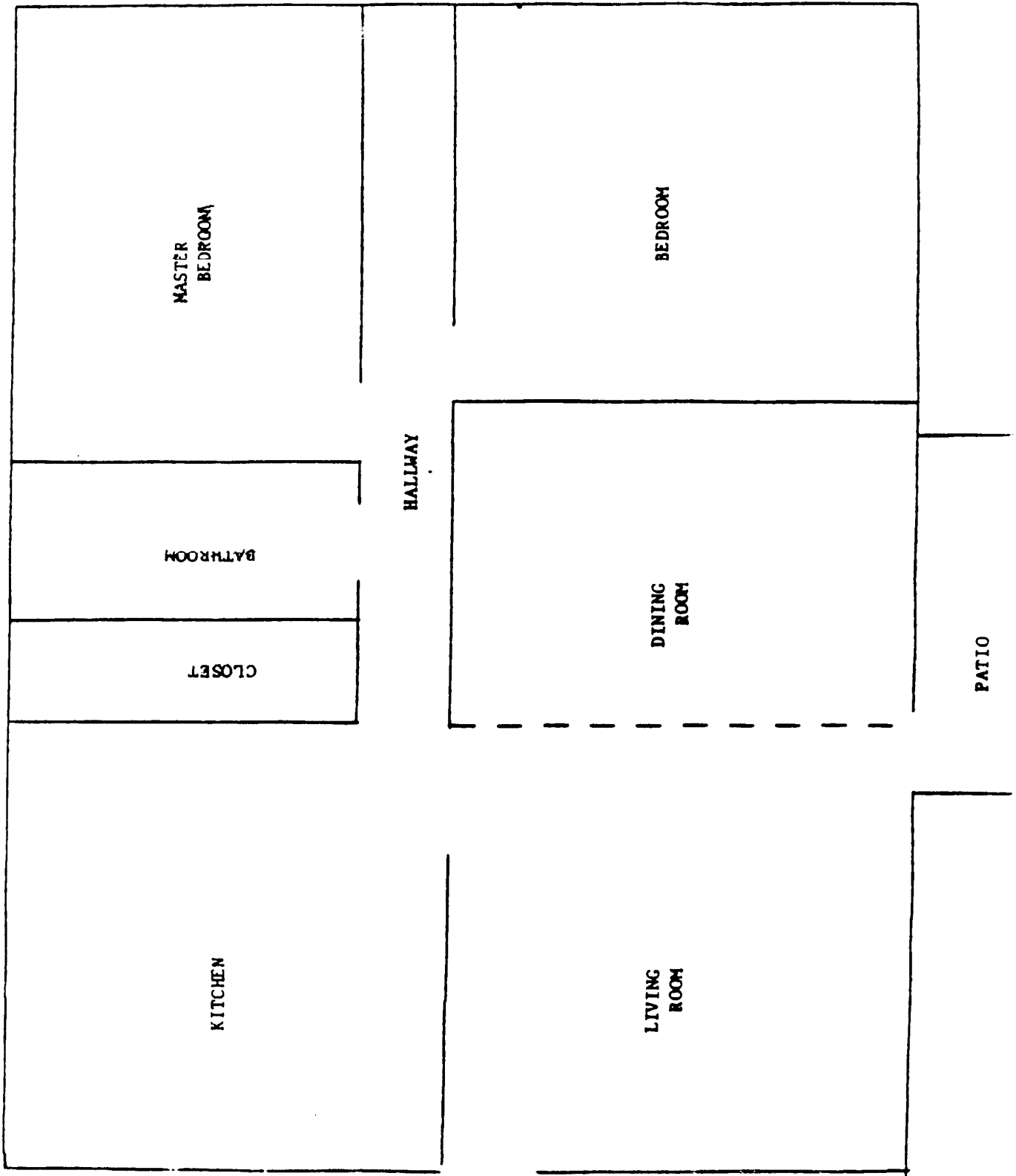
**509 Warranty of Habitability**

A landlord who leases premises to a tenant for residential use impliedly warrants that the premises are habitable for residential use.

**§509.10 Warranty of Habitability -- Breach**

A landlord breaches the implied warranty of habitability when a material, defective condition affecting habitability exists and the tenant gives the landlord reasonable notice after the tenant discovered or should have discovered the breach of warranty. Said conditions must not be caused by the negligent acts of the tenant or tenants' agents.

Ninth Street Diagram



July 1, 20XX

L. Marten  
1220 Meyers Way  
Bloomington, Euphoria 99999

Dear L. Marten,

I am not giving you anymore rent and I think you know my reasons! I work nights at the Cannery and it has been so hot I haven't gotten any sleep during the day time - You promised me you would install an air conditioner and the summer is half over and you haven't done it yet. Also that toilet floods over every other day and I think there must be a tree root in the line leading to the sewer. Also could you fix that window in the kitchen? The bugs just fly into that window and get all over our food. We also have mice!

Besides that I'm thinking about moving to a place closer to the Cannery because that old Plymouth won't hardly start some mornings. Also some of the neighbors have been claiming that my boys rough housing is disturbing them - you know how kids are these days. Anyway, I can't hardly stand living without our air conditioner.

Yours truly,

L. Smith

*L. Martin*

*1220 Meyers Way  
Bloomington, Euphoria 99999*

July 3, 20XX

L. Smith  
95 Ninth Street  
Bloomington, Euphoria 99999

Dear L. Smith:

I got your letter dated July 1, and am surprised. You seemed like a nicer person. You should stay away from those tenants' rights people. They're nothing but troublemakers. As I told you before, I'll fix the window your kids broke when my Social Security check comes in. I'm looking for an air conditioner for you. As far as the plumbing goes - the plumber said the problem was caused by your kids stuffing things down the toilet. What your kids do, you have to fix. Please pay the rent. I need the money.

Sincerely,

*L. Martin*

L. Martin

BLOOM COUNTY



EUPHORIA

**BLOOM COUNTY**  
**Department of Health Services**  
**Bureau of Environmental Sanitation**  
**1193 Santos Lane**  
**Bloomington, Euphoria 99999**

July 30, 20XX

L. Martin  
1220 Meyers Way  
Bloomington, Euphoria 99999

Re: Complaint - 95 Ninth Street  
Bloomington, Euphoria 99999

Dear L. Martin:

The Department of Health Services recently received a complaint from your tenant, L. Smith, that the residential property located at 95 Ninth Street was in a state of disrepair. Specifically, the complaints were that you had failed to repair a broken window, a plugged commode, and had refused to install an air conditioner.

I do not find any code provision requiring the presence of an air conditioner. However, my inspection did reveal that when the commode was flushed two or three times consecutively, it would overflow. Obviously, there is some blockage in the line that causes the water to back up. I confirmed that a window in the kitchen was missing and numerous insects entered the house through that opening. Also, my inspection revealed that the heater was improperly vented and that bare electrical wires were exposed on the bedroom light fixture and the living room light switch. I warned the children there to avoid those wires because of the possibility of electrical shock.

The house of the above address is a small two-bedroom building, currently occupied by Complainant and three children. Internally, the premises were in a great state of disarray and the floors, walls, cabinets, and fixtures appeared to have gone unclean for several months.

Although one of the boys told me he had knocked out the window, as far as this office is concerned, the responsibility is yours to either replace or obtain replacement of the broken window immediately. You have 30 days from the date of this letter, to correct the defects listed above. Enclosed is the official notice order to comply.

County Health Officer

By Bernard Hatcher  
BERNARD HATCHER, Sanitarian

BH/ad  
Enclosure

**Official Seal**  
**County of Bloom**  
**Dept. of Health Services**

BLOOM COUNTY



EUPHORIA

**BLOOM COUNTY**  
**Department of Health Services**  
**Bureau of Environmental Sanitation**  
1193 Santos Lane  
Bloomington, Euphoria 99999

**OFFICIAL NOTICE AND ORDER TO COMPLY**

July 30, 20XX

L. Martin  
1220 Meyers Way  
Bloomington, Euphoria 99999

Re: 95 Ninth Street  
Bloomington, Euphoria 99999

Dear L. Martin:

Repair/replace exposed electrical wiring and cover/fixture outlets throughout, repair/replace improperly vented and valved heating unit in living room, repair sewage disposal line, toilet blockage, vermin infestation in kitchen.

Said repairs must be completed within 30 days of the date of this notice as required by Euphoria Health & Safety Code Sections 28, 35 and 381 and Bloom County Ordinance 78913.

By Bernard Hatcher  
BERNARD HATCHER  
County Health Officer

Sent First Class Mail on July 30, 20XX to the above address.

By Louis Liu

**Official Seal**  
**County of Bloom**  
**Dept. of Health Services**

BLOOM COUNTY



EUPHORIA

**BLOOM COUNTY**  
**Department of Health Services**  
**Bureau of Environmental Sanitation**  
1193 Santos Lane  
Bloomington, Euphoria 99999

Report of Bernard Hatcher Re: 95 Ninth Street property:

Visited property as result of complaint by L. Smith, regarding plumbing and insect problem

Exterior: Run-down two bedroom wood house, no lawn, needs paint. Broken window in kitchen

Interior: Filthy, bad stench, faulty wiring, clogged sewer pipe, many bugs, mice dropping

Comments: House presently violating several code sections. Notice to Correct sent to L. Martin.

DATED: July 30, 20XX

COUNTY HEALTH OFFICER

A handwritten signature in cursive script, appearing to read "Bernard Hatcher", written over a horizontal line.

BERNARD HATCHER, Sanitarian

**Official Seal**  
**County of Bloom**  
**Dept. of Health Services**



21 Grace Hopper Ave, Stop 5  
Monterey, EU 93943-5505  
999/656-1725

Weather Conditions In Bloom County  
September 1, 20XX Through August 31, 20XX

September 20XX-1 -  
November, 20XX-1:

The seasonal temperatures for this period range from an average low of 41° to an average high of 72°. This period in 20XX-1 was slightly warmer than normal.

December 20XX-1 -  
February 20XX:

The seasonal temperatures for this time of year range from an average low of 22° to an average high of 43°. This period in the past year was slightly cooler than usual.

March 20XX -

The seasonal temperatures for this time of year range from an average low of 31° to 79°. March, 20XX, was slightly cooler than normal with 11 days in which the temperature of the Altadena Station registered 32o or lower.

April 20XX -

Showed a seasonal warming trend in which the average temperature ranged from 38° to 83°. Frost warnings were predicted for the County on only one occasion. Some frost damage did occur in the County.

May and June 20XX -

The normal warming trend continued with slightly higher than normal temperatures occurring in the early part of June. The average low temperatures for these months was 51°.


July & August 20XX -

The day-time temperatures were slightly cooler than the seasonal norm for this time of year. The average temperature ranged from 55° to 90°.

This report was done in the regular course of business at the National Weather Service in the County of Bloom by meteorologists under my supervision, for the period of September 1, 20XX-1 to August 31, 20XX.

This is a true and accurate copy of the official record in my custody.

Dated: September 10, 20XX

  
\_\_\_\_\_  
JAMES GRIFFIN  
Meteorologist Supervisor

**Official Seal**  
**National Weather Service**

1 Pat Horace  
2 Horace & Mann  
3 211 Broadway Street  
4 Bloomington, Euphoria 99999  
5 V:909/972-0100; F:909/972-0107  
6 E: phorace@horacelaw.com  
7 State Bar #06911

8  
9 Attorney for Plaintiff L. Martin

10  
11  
12 COURT OF BLOOM COUNTY  
13 STATE OF EUPHORIA

14  
15 L. Martin, ) Case No.: 40218  
16 Plaintiff, )  
17 vs. ) COMPLAINT FOR  
18 ) UNLAWFUL DETAINER  
19 L. Smith, )  
20 Defendant )  
21 )  
22

- 23  
24 1. The premises are located at 95 Ninth Street, Bloomington, County of Bloom, Euphoria.  
25  
26 2. Plaintiff, L.MARTIN, is the sole owner of these premises at all times mentioned.  
27  
28 3. Defendant, L. SMITH, entered into the possession of the premises pursuant to an oral month-to-month  
29 agreement on March 1, 20XX-1 and continues to occupy the premises.  
30  
31 4. By the terms of the agreement, defendant was required to pay \$1100.00 per month as rent to plaintiff.  
32  
33 5. Plaintiff has performed all conditions and covenants required to be performed and has at all times  
34 maintained the premises in a habitable condition.  
35  
36 6. Defendant has not paid the following rent required by the terms and provisions of the agreement and  
37 these amounts are now due and owing: \$1100.00 due July 1, 20XX, and \$1100.00 due August 1, 20XX.  
38  
39 7. On August 3, 20XX, plaintiff caused to be served on defendant a written three-day notice stating  
40 amount of rent due and requiring defendant to pay the rent due or deliver up possession of the premises  
41 within three days after service of the notice. A true copy of this notice is attached as Exhibit "A" and is  
42 incorporated by reference here.  
43  
44 8. More than three days has elapsed since the service of said notice, but no part of the rent has been paid.  
45 Plaintiff is entitled to possession of the premises.  
46  
47 9. Defendant continues in possession of the premises without plaintiff's permission or consent, contrary  
48 to the terms of the agreement. Defendant's continued possession is willful, intentional, deliberate, and  
49 obstinate.  
50

1 10. The reasonable rental value of said premises is the sum of \$36.67 per day. Defendant's unlawful  
2 detention has caused damages to plaintiff and have accrued at this rate since August 7, 20XX, and will  
3 continue to accrue at said rate so long as defendant remains in possession of the premises.

4  
5 WHEREFORE, plaintiff prays:

- 6 1. For restitution of said premises;  
7 2. For the rent of said premises now due and unpaid for the period set forth above in the total sum of  
8 \$1100.00;  
9 3. For damages at the rate of \$36.67 per day from and including August 7, 20XX, for each day defendant  
10 continues in possession of said premises, and that such amount be trebled.  
11 4. Defendant waives all damages in excess of this court's jurisdiction.  
12 5. For costs herein and such further relief as is proper.

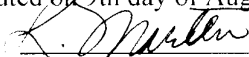
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14 DATED: August 9, 20XX

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20 HORACE & MANN  
21 Pat Horace  
22 Attorney for Plaintiff  
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41 VERIFICATION

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43 I am the plaintiff in this proceeding and have read this complaint. I declare under penalty of perjury that  
44 the foregoing is true and correct. Executed on 9th day of August, 20XX.

45 

46 \_\_\_\_\_  
47 L. MARTIN  
48  
49  
50

1  
2 **Three Day Notice to Pay or Quit**  
3

4  
5 To L. Smith, 95 Ninth Street  
6 Bloomington, Euphoria 99999  
7

8  
9 **NOTICE IS HEREBY GIVEN THAT**, pursuant to the agreement by which you now hold  
10 possession of the above described premises, there is now due and unpaid \$2,200.00 rent for July  
11 and August 20XX (July 1 - July 31, 20XX= \$1100.00; August 1-31<sup>st</sup>, 20XX =\$1100.00) for a  
12 sum total of \$2200.00 rent.  
13  
14

15  
16 **WITHIN THREE DAYS** after service of this notice on you, you are required to pay \$2,200.00  
17 rent in full or in the alternative, to deliver up possession of the premise to the undersigned. If  
18 you fail to pay rent or leave the premises, legal proceedings will be commenced against you to  
19 recover possession of the premises and to recover treble damages for the unlawful detention of  
20 the premises.  
21  
22

23  
24  
25 DATED: August 3, 20XX  
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29  
30 L. Martin, Landlord  
31

32  
33 **EXHIBIT A**  
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1 A. CHISSOM  
2 Shirley & Chissom  
3 3535 W. 6th Street  
4 Bloomington, Euphoria 99999  
5 V: 909/972-9100; F:909/972-9107  
6 E: achissom@chissomlaw.com  
7 State Bar #05611  
8

9 Attorney for Defendant  
10

11  
12 COURT OF BLOOM COUNTY  
13 STATE OF EUPHORIA  
14

15 L. Martin, ) Case No.: 40218  
16 Plaintiff, )  
17 vs. ) ANSWER TO COMPLAINT  
18 ) FOR UNLAWFUL DETAINER  
19 L. Smith, )  
20 Defendant )  
21

22  
23 1. Defendant denies generally and specifically each and every allegation contained in paragraphs 5, 7, 8 and  
24 9.  
25

26  
27 2. Defendant has no information or belief on the subject sufficient to enable her to answer the allegations of  
28 paragraph 2, and placing her denial on that ground, denies generally and specifically every allegation therein.  
29

30  
31 3. Defendant denies generally and specifically each and every allegation contained in paragraph 6 and further  
32 denies that there is now due and owing any amount.  
33

34  
35 4. Defendant denies generally and specifically each and every allegation contained in paragraph 10 and  
36 further denies that the reasonable rental value of said premises is the sum of \$36.67 per day or any other sum.  
37

38 //

39  
40 FIRST AFFIRMATIVE DEFENSE  
41 [Breach of Warranty of Habitability]  
42

43  
44 5. At all times mentioned during defendant's tenancy, plaintiff has maintained the premises in violation of  
45 Bloomington housing codes.  
46

47  
48 6. These violations constitute material and defective conditions which breach plaintiff's warranty of  
49 habitability. These defects include: a. Faulty electrical wiring b. heater malfunctioning c. overflowing toilet  
50 d. missing window. These defects have caused health hazards for defendant and her three children.

1  
2 7. At all times mentioned, plaintiff has reasonable notice of these defects and reasonable time to correct  
3 them.

4  
5  
6 8. Plaintiff has failed and continues to fail to repair these defects, thereby breaching her warranty of  
7 habitability. Defendant is therefore relieved of any obligation to pay rent for July and August 20XX.  
8

9  
10  
11 SECOND AFFIRMATIVE DEFENSE  
12 [Retaliatory Eviction]

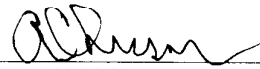
13 9. During the month of July, 20XX, defendant lodged a formal complaint about the manner in which plaintiff  
14 maintained the premises with the Bloom County Department of Health Services. Pursuant to that complaint,  
15 Health Services found several violations of the Euphoria Health and Safety Code and are Bloom Health  
16 Code.  
17  
18

19  
20  
21 10. Plaintiff served a three-day notice and brought this action to evict the defendant solely to retaliate against  
22 the defendant for reporting health and safety violations to the Department of Health Services. As a result,  
23 plaintiff's retaliatory eviction is contrary to Euphoria public policy.  
24  
25

26  
27  
28 WHEREFORE, defendant prays:

- 29  
30 1. That plaintiff take nothing by this action;.  
31  
32 2. For costs of suit incurred herein; and  
33  
34 3. For such other and further relief as this Court may deem just and proper.  
35

36 DATED: August 19, 20XX  
37  
38  
39

40  
41  
42   
43 A. CHISSOM  
44 Attorney for the Defendant  
45  
46  
47  
48  
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1  
2  
3 VERIFICATION

4 STATE OF EUPHORIA, COUNTY OF BLOOM

5  
6 I am the defendant in the above entitled action. I have read the **Answer**. I certify that the same is true  
7  
8 of my own knowledge, except as to those matters which are therein stated upon my information or belief, and  
9  
10 as to those matters I believe is to be true.

11 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 19,  
12  
13 20XX at Bloomington, Euphoria.



14  
15 L. SMITH  
16  
17

18 PROOF OF SERVICE BY MAIL (1013a, 2015.5 C.C.P.)  
19

20  
21 STATE OF EUPHORIA, COUNTY OF BLOOM  
22

23 I am a citizen of the United States and a resident of Bloom County. I am over the age of eighteen  
24  
25 years and not a party to the within entitled action, my business address is: 3535 W. 6th Street, Bloomington.  
26  
27 On August 19, 20XX, I served the within **Answer** on the plaintiff by placing a true copy thereof enclosed in a  
28  
29 sealed envelope with postage thereon fully prepaid, in the United States mail at 3535 W. 6th Street,  
30  
31 Bloomington addressed s follows:  
32

33 HORACE & MANN  
34 Attorneys at Law  
35 211 Broadway  
36 Bloomington, Euphoria 99999  
37

38  
39 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 19,  
40  
41 20XX at Bloomington, Euphoria.  
42



COURT OF BLOOM COUNTY  
STATE OF EUPHORIA

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L. Martin, ) Case No.: 40218  
Plaintiff, )  
vs. )  
L. Smith, )  
Defendant )

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-000-

Bloomington, Euphoria August 30, 20XX

-000-

DEPOSITION OF L. SMITH

-000-

Reported by: Jean Graveline  
C.S.R. 7983  
August 31, 20XX

COURT OF BLOOM COUNTY  
STATE OF EUPHORIA

1  
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6 L. Martin, ) Case No.: 40218  
7 Plaintiff, )  
8 vs. )  
9 )  
10 L. Smith, )  
11 Defendant )  
12

13  
14  
15 Bloomington, Euphoria

August 31, 20XX

16  
17 -000-

18 The deposition of L. SMITH was taken in the above-entitled matter pursuant to the provisions of  
19 law pertaining to the taking and use of depositions, on August 31, 20XX, commencing at the hour of 9:10  
20 A.M., at the offices of Horace & Mann, 211 Broadway, Bloomington, Euphoria, before Jean Graveline,  
21 C.S.R. NO. 7983, a Notary Public of the State of Euphoria, having offices located at Bloomington,  
22 Euphoria.  
23  
24  
25  
26  
27

28 APPEARANCES OF COUNSEL:

29 For the Plaintiff:

30 HORACE & MANN  
31 By: Pat Horace  
32 211 Broadway  
33 Bloomington, Euphoria 99999  
34  
35

36 For the Defendant:

37 SHIRLEY & CHISSOM  
38 By: A. Shirley  
39 3535 W. 6th Street  
40 Bloomington, Euphoria 99999  
41  
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43 -000-  
44  
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46 The following proceedings were had and testimony taken, to wit:  
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L. SMITH:

Being first duly sworn by the Notary, testified as follows:

Examination by Mr. Horace

Q: Please state your full name:

A: L. Smith

Q: I am going to ask you some questions about the condition of the house that you are renting from L. Martin. Do you understand?

A: Yes.

Q: When you moved into the house last March, was no air conditioner there?

A: Yes.

Q: And you wrote L. Martin a letter on July 1, 20XX asking for an air conditioner. Is that right?

A: Yes.

Q: And in that letter you said that Martin has promised an air conditioner to you, right?

A: Yes.

Q: Could you tell me when Martin promised to install the air conditioner?

A: Yes.

Q: Could you tell me if that was when you moved in?

A: Yes, I think so.

Q: And when you stopped paying the rent in July of this year, was that one of the reasons for you not paying the rent?

A: No.

Q: Could you tell me what the reasons were for you not paying the rent?

A: Okay, there are three things that I wanted L. Martin to fix that weren't done.

Q: Could you please be specific?

A: The most important one is the toilet in the bathroom. It kept overflowing. I told L. Martin

1  
2 about this a lot of times and I finally wrote the letter in July. The second one was the electrical  
3 wiring. The light in one of the bedrooms finally just fell down. And one of the sockets is all black  
4 around it from the electrical short. I think the landlord knows about these things because of the building  
5 inspector's report. And also I told the landlord about the broken window in the kitchen. That's all.  
6  
7

8  
9 Q: Did you know that L. Martin had come to the house on several occasions to start the repairs?  
10

11 A: That's what L. Martin told me. I haven't seen her.  
12

13 Q: And did you know that L. Martin had arranged for a plumber to come to the house in July and do you  
14 recall answering the door to the plumber and telling him not to come in?  
15

16 A: Yes, but that was when the plumber wouldn't identify himself and I didn't want him to come in.  
17

18 Q: But you had requested L. Martin to send the plumber to fix the toilet, had you not?  
19

20 A: Right.  
21

22 Q: Now L. Smith, you have one teenage boy, and two younger boys in your family, don't you?  
23

24 A: Yes.  
25

26 Q: And is it a possibility that your children have caused some damage to the house and L. Martin had  
27 spoken to you about?  
28

29 A: That's possible, but they haven't had anything to do with the bad toilet or the electrical wiring.  
30

31 Q: Now specifically in regard to the broken window, have you stated to anyone that one of the boys  
32 broke that window?  
33

34 A: No.  
35

36 Q: And isn't it true L. Smith that there is a fairly large hole in the wall of the front room which was  
37 caused by one of your children?  
38

39 A: Yes, that is correct, but I will have it fixed.  
40

41 Q: And isn't it true that the bedroom door is hanging loose because the hinges have been broken?  
42

43 A: That door has been loose for a long time and maybe my kids made it a little bit loose, but that's all.  
44

45 Q: Could you tell me, L. Smith if your children have been involved with the juvenile authorities and what  
46 the reasons were?  
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A: My children have been taken to Juvenile Hall because there was no one to look after them in the evenings. My neighbors said that they were roughhousing too much. Since then I have someone who comes just after my children get home from school and stays with them until they were in bed. I am not there in the evening because I am working.

Q: How recently was this Ms. Smith?

A: I believe it was in January or February, 20XX.

Q: How often were your kids taken to Juvenile Hall?

A: Once, no, twice; once in October 20XX-1 and then again in December 20XX-1.

Q: L. Smith, you mentioned that you had discussed your obligation to pay the rent with the tenants' rights organization, is that correct?

A: Yes.

Q: Do you recall when you first talked to the Tenants' Rights Organization people?

A: I think it was in June or July.

Q: Do you recall if it was before or after you wrote the July 1 letter to L. Martin?

A: I think it was after.

-- That is the end of my questioning, counsel.

Do you care to ask any questions?

Examination by Ms. Shirley

Yes, thank you, just a few.

Q: Could you give the names, and ages of your children Ms. Smith?

A: I have three boys, Brian 8, Bradley 10, and Bruce 13.

Q: And will you tell me what hours and days you work, L. Smith?

A: I work the swing shift, 5 days a week. That's from 4:00 in the afternoon till midnight.

Q: So with those working hours, you are not home a lot while the children are at home, is that correct?

A: Yes.

Q: Is there someone who watches the children during these times?

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A: I have someone who came just after the children come home from school and stays there until the children are in bed, usually by 9:00 o'clock.

Q: Does this mean that you sleep during the day?

A: Yes.

Q: Do you keep a sign on the door while you are sleeping?

A: Yes.

Q: And do you often not answer the door during the day?

A: Yes, because I am sleeping.

Q: And is it possible that L. Martin has come to the house when you have been sleeping and you have not answered the door?

A: Yes.

Q: Do you recall the incident regarding the plumber sent by L. Martin which was asked about earlier?

A: Yes.

Q: And can you tell me what happened at that time?

A: Yes. I came to the door and a man was standing there saying he was a plumber and wanted to see the bathroom; I did not let him in because I have had trouble with the people from the Drug Rehabilitation enter before and because he won't identify himself and he did not have any tools with him. I think he said his tools were in the truck and he would get them and come back, but he didn't.

Q: You mentioned trouble with the Drug Rehabilitation Center people. Could you be more specific?

A: Yes. The Drug Rehabilitation Center is across the street in the old Safeway store. Some of the people who go there have made a habit to come to the house and ring the bell. So I am extra suspicious when somebody comes to the door during the day.

Q: Regarding the toilet in the bathroom, did you call a plumber to fix it?

A: Yes. The toilet kept on overflowing and L. Martin wouldn't do anything about it, so I called a plumber to fix it. Also one of the kids broke the bathroom sink and I wanted that replaced too.

Q: Could you tell me what the plumber did?

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A: The plumber replaced the sink and took the toilet off the floor and took out the old connecting pipe and put a new one in. Then the plumber put the toilet back on the floor.

Q: Did the plumber give a bill for the work that he did?

A: Yes.

Q: Do you know how much the bill was?

A: ~~\$635.80.~~ \$622.80 *LS*

Q: Did you pay the bill?

A: Yes.

-- I have no further questions.

DECLARATION OF L. SMITH

I hereby declare under penalty of perjury that I have read the foregoing and it is true and correct to the best of my knowledge, including any corrections that I have made.

Dated: Sept. 2, 20XX at Bloomington, Euphoria.

*L. Smith*

L. SMITH

NOTARY

Notary Public of the State of Euphoria, having offices at Bloomington Euphoria.

Dated this 2nd day of Sept., 20XX

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State of Euphoria )  
 ) ss.  
County of Bloom )

I, JEAN GRAVELINE, a Notary Public of the State of Euphoria, do hereby certify that L. SMITH,  
the witness named in the foregoing deposition, was by me duly sworn; that said deposition was taken at  
the time and place mentioned on the first page hereof.

On August 31, 20XX that the said deposition was taken in shorthand by myself, a Certified  
Shorthand Reporter, and under my direction transcribed into the foregoing typewritten transcript, and that  
said transcript is a true record of the testimony given by the witness.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal at my office in  
Bloomington, Euphoria, this 3rd day of September, 20XX.

  
JEAN GRAVELINE, C.S.R. NO. 7983

**Official Seal**  
Jean Graveline  
Notary Public -Euphoria  
Bloom County  
My Commission expires December 2, 20XX

COURT OF BLOOM COUNTY  
STATE OF EUPHORIA

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7 L. Martin, ) Case No.: 40218  
8 Plaintiff, )  
9 vs. )  
10 )  
11 L. Smith, )  
12 Defendant )  
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17 Bloomington, Euphoria

August 30, 20XX

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23 DEPOSITION OF BERNARD HATCHER  
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39 Reported by: Jean Graveline  
40 C.S.R. 7983  
41 August 30, 20XX  
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COURT OF BLOOM COUNTY  
STATE OF EUPHORIA

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7 L. Martin, ) Case No.: 40218  
8 Plaintiff, )  
9 vs. )  
10 )  
11 L. Smith, )  
12 Defendant )  
13

14  
15 Bloomington, Euphoria

August 30, 20XX

16  
17 -000-

18 The deposition of BERNARD HATCHER was taken in the above-entitled matter pursuant to the  
19 provisions of law pertaining to the taking and use of depositions, on August 30, 20XX, commencing at  
20 the hour of 9:10 A.M., at the offices of Horace & Mann, 211 Broadway, Bloomington, Euphoria, before  
21 Jean Graveline, C.S.R. NO. 7983, a Notary Public of the State of Euphoria, having offices located at  
22 Bloomington, Euphoria.  
23  
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28 APPEARANCES OF COUNSEL:

29 For the Plaintiff:

30 HORACE & MANN  
31 By: Pat Horace  
32 211 Broadway  
33 Bloomington, Euphoria 99999  
34  
35

36 For the Defendant:

37 SHIRLEY & CHISSOM  
38 By: A. Shirley  
39 3535 W. 6th Street  
40 Bloomington, Euphoria 99999  
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46 The following proceedings were had and testimony taken, to wit:  
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2 BERNARD HATCHER

3  
4 Being first duly sworn by the Notary, testified as follows:

5  
6 Examination by Mr. Horace

7  
8 Q: Please state your full name for record?

9  
10 A: Mr. Hatcher, Bernard Hatcher.

11  
12 Q: What is your present occupation, Mr. Hatcher?

13  
14 A: I'm a Sanitarian for the County Health Department. That is, I inspect residences for compliance with  
15 Housing Code provisions.

16  
17 Q: How long have you held that position?

18  
19 A: A little over a year and a half.

20  
21 Q: During that period of time, how many units have you inspected?

22  
23 A: I would guess I've been to several hundred units to check for code violations since I've been with the  
24 County.

25  
26 Q: Is checking for code violations your sole function as a sanitarian?

27  
28 A: Yes, primarily.

29  
30 Q: Do you do anything else in the course of your job?

31  
32 A: From time to time I have checked institutions around town - restaurants, jails, schools and the like - to  
33 see that there are no dangerous conditions which might pose a threat to customers and others.

34  
35 Q: What has been your employment history prior to your joining the Health Department?

36  
37 A: Mostly working around buildings, their construction, proper maintenance, stuff like that. I was  
38 also a real estate salesman for a number of years and a used car salesman for a while.

39  
40 Q: Did you take any kind of test to obtain your present employment?

41  
42 A: No. I knew some people down at the department. They knew I was good for the job, with my  
43 background and everything.

44  
45 Q: Calling your attention to July of this year, did you receive a complaint from the defendant in this case,  
46 Mr. Hatcher.

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A: No. I wouldn't receive the complaint. I believe she called in and spoke with a secretary.

Q: When did that occur?"

A: I don't know exactly. I was on vacation for a couple weeks in the middle of the month and I think that complaint came in during that time.

Q: Would anyone else in your office know?

A: My secretary would probably know. She makes a memo on each complaint. The name of the complainant, the address, a brief description of the problem, like that.

Q: Do you still have that information?

A: You mean did I keep the memo. No, they're discarded when I make my report since my report has the same information.

Q: When did you first become aware of the complaint filed against my client?

A: Again, I can't tell you exactly. I took a two-week vacation in the middle of July and it might have come in during that period. My vacation was from July 6th to July 21st. I'm sure I didn't inspect the Martin residence until I returned to work after my vacation. Let's see, that would be the week of the 22nd. Then I think I wrote my report a few days later, that would be the 26th, but it didn't get typed and in the mail until the 30th.

Q: Do you recall what date you visited the premises?

A: No, I don't recall. I usually conduct several investigations a week as a result of complaints. And I've made visits since this one. I'm really not sure exactly which day it was. There wasn't really anything about this one to distinguish it from the others.

Q: What did you look for when you visited the premises?

A: Well, I had a pretty good idea of the problem from the memo my secretary had made up. What I do when I go out on an inspection is to check out the complaint and look for any other violations that might be there. Often people don't realize that something violates the law. Things people do every day, like hooking up a toaster, a clock, a radio, and maybe a hair dryer, all to one outlet. Well, I look for violations and then file a report.

1  
2 Q: Did you find any violations at 95 Ninth Street?

3  
4 A: Oh yes, I sure did. That place is a rat-trap. It needs paint. Inside, there's a terrible stench. Smells  
5  
6 kind of like old garbage and dog waste. The walls were very dirty and you could see where lint had  
7  
8 collected on the grease on the walls in the kitchen. The linoleum floors were dirty and worn through in  
9  
10 several places. Not to mention the filth, there were a number of violations.

11 Q: What were those violations?

12  
13 A: First, there was exposed electrical wiring, particularly in the living room on the light switch. If  
14  
15 someone touched more than just the plastic, they could get quite a jolt. Another bad thing was the heater  
16  
17 in the living room. It wasn't vented and this could cause real problems in the winter. Without proper  
18  
19 ventilation you can lose your flame and unless it's got an automatic thermocouple, the gas will leak -  
20  
21 could gas everyone in the house.

22 Q: Let me interrupt you for a second, Mr. Hatcher. Do you consider yourself an expert in the functioning  
23  
24 of heaters?

25  
26 A: I know a lot about them. I've worked around apartments for years and I had to know about heaters. I  
27  
28 know all about how to repair them and how to tell what's wrong with them. Now, if I can continue, the  
29  
30 problem Ms. Smith reported, the flare-ups, wasn't really what I found. I don't think the missing vent  
31  
32 could cause the flare-ups. That sounds more like air in the line, or a valve defect.

33  
34 Q: Did you find any other violations?

35  
36 A: Yes, the toilet was not functioning. I think Martin may have a root problem or maybe a collapsed line.

37  
38 Q: Do you consider yourself an expert on plumbing?

39  
40 A: Again, I think my work history speaks for itself.

41  
42 Q: Do you have experience or training as a plumber?

43  
44 A: Yes.

45  
46 Q: Was there anything else, any other violations?

47  
48 A: A couple of things. One was the flies and insects. They were all over the place. This was primarily  
49  
50 caused by a broken window. A broken window can be a violation, but here, one of the kids told me he

1  
2 had broken the window by accident. I didn't consider that a violation. But the bugs could be. They were  
3  
4 bad enough.

5  
6 Q: Do you have anything you want to ask?

7  
8 By Attorney for Defendant:

9  
10 A. No, thank you.

11  
12 DECLARATION OF BERNARD HATCHER

13 I hereby declare under penalty of perjury that I have read the foregoing and it is true and correct to  
14  
15 the best of my knowledge, including any corrections that I have made.

16  
17 Dated Sept 1 at Blossington, Euphoria.

18  
19  
20   
21 BERNARD HATCHER

22  
23  
24 NOTARY

25  
26  
27 Notary Public of the State of Euphoria, having offices at Blossington Euphoria.

28  
29 Dated this 1<sup>st</sup> day of September, 20XX.

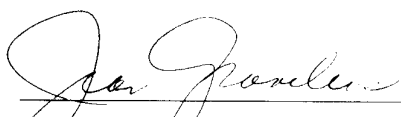
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State of Euphoria )  
 ) ss.  
County of Bloom )

I, JEAN GRAVELINE, a Notary Public of the State of Euphoria, do hereby certify that  
BERNARD HATCHER, the witness named in the foregoing deposition, was by me duly sworn; that said  
deposition was taken at the time and place mentioned on the first page hereof.

On August 30, 20XX that the said deposition was taken in shorthand by myself, a Certified  
Shorthand Reporter, and under my direction transcribed into the foregoing typewritten transcript, and that  
said transcript is a true record of the testimony given by the witness.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal at my office in  
Bloomington, Euphoria, this 3rd day of September, 20XX.

  
JEAN GRAVELINE, C.S.R. NO. 7983

**Official Seal**  
Jean Graveline  
Notary Public -Euphoria  
Bloom County  
My Commission expires December 2, 20XX

1 Pat Horace  
2 Horace & Mann  
3 211 Broadway Street  
4 Bloomington, Euphoria 99999  
5 V:909/972-0100; F:909/972-0107  
6 E: phorace@horacelaw.com  
7 State Bar #06911

8  
9 Attorney for Plaintiff L. Martin

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11  
12 COURT OF BLOOM COUNTY  
13 STATE OF EUPHORIA

14  
15 L. Martin, ) Case No.: 40218  
16 Plaintiff, )  
17 vs. ) PLAINTIFF L.MARTIN'S ANSWERS  
18 ) TO DEFENDANT'S INTERROGATORIES  
19 L. Smith, )  
20 Defendant )  
21 )  
22

23  
24 1. State the name and address of each of the true owners of the premises located at 95 Ninth Street.

25  
26 **L.Martin, 1220 Meyers Way, is the sole owner of the premises.**

27  
28 2. Which of the owners listed in response to No. 1 authorized the preparation and service of the three-day  
29 notice and the filing of the unlawful detainer action?

30  
31 **Objection, attorney-client privilege.**

32  
33 3. When was an attorney first contacted in regard to initiating the eviction proceedings?

34  
35 **Objection, this information is protected by the attorney-client privilege.**

36  
37 4. When was an attorney first contacted in regard to preparing the three-day notice?

38  
39 **Objection, this information is protected by the attorney-client privilege.**

40  
41 5. Does the plaintiff own or have any legal or equitable interest in or possession or control of any other  
42 real property leased at any time within the last three years as a family residence?

43  
44 **No.**

45  
46 6. Give the popular description, i.e., house and street address of each separate unit.

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48 **N/A**  
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7. For each unit give the date when the interest or control was first obtained.

**N/A**

8. For each unit what is the period of time each unit was leased?

**N/A**

9. For each unit give the name and current address of each current and previous tenant.

**N/A**

10. Has any rental property, either owned or controlled now or previously by plaintiff, been condemned as unfit for human habitation by and City, County or State Official?

**No.**

11. Give the popular description of each unit or parcel so condemned.

**N/A**

12. For each parcel condemned give the date it was condemned.

**N/A**

13. Give the name, position and current address of the officer issuing the condemnation order.

**N/A**

14. Has any rental property, either owned or controlled now or previously by plaintiff, been inspected for housing code standard violations?

**No.**

15. Give the popular description of each unit or parcel inspected.

**N/A**

16. For each unit, or parcel inspected give the approximate date of the inspection.

**N/A**

17. For each unit, or parcel inspected give the name, position and current address of the person making the inspection.

**N/A**

//

1  
2 18. For each unit, indicate whether the inspection was pursuant to a complaint and, if so, whether the  
3 complainant was a tenant.  
4

5 **N/A**  
6

7  
8 19. Is the residence where the plaintiff lives, rented or owned by the plaintiff?  
9

10 **Plaintiff is presently purchasing a home.**

11 20. Has the plaintiff at any time during the last six months lived in a house in which:  
12

13 a. Bare electrical wires were exposed?  
14

15 b. Windows were missing?  
16

17 c. Bathroom plumbing totally plugged?  
18

19 d. The heater was inoperative and a threat to the safety and welfare of the occupants?  
20

21 **Objection, irrelevant.**  
22

23 21. Give a complete account of the report submitted to the plaintiff by the County Department of Health  
24 Services in the alternative attach a copy to the answers to these interrogatories.  
25

26 **See copy of letter and report attached as Exhibit A. (See p. 6 - 8 Case File)**  
27

28 22. When was that report received?  
29

30 **On or about August 3, 20XX**  
31

32 23. What, if any, action has been taken to correct the defects listed therein?  
33

34 **Answer:**

35 Plaintiff has on numerous occasions remedied the plugged bathroom plumbing only to have the occupants  
36 of the premises plug it up again. In addition, plaintiff had repaired the kitchen window by taping some  
37 very minor cracks and the defendant's child broke out the window. Plaintiff inspected defendant's heater  
38 and found it in good working condition. On other occasions plaintiff has gone to the premises to make  
39 repairs only to leave because of the "Day Sleeper" sign hanging on the door.  
40

41 24. Give a complete account of the letter from defendant delivered to plaintiff on or about July 1, 20XX  
42 in which the defendant disclaimed any obligation to pay further rent, or in the alternative attach a copy to  
43 the answers to these interrogatories.  
44

45 **A copy of defendant's letter is attached as Exhibit B. (See p. 4 Case File)**  
46

47 25. When was this letter received by plaintiff?  
48

49 **This letter was hand delivered to plaintiff on or about July 1, 20XX.**  
50

1  
2 26. What, if any, action has been taken to correct the defects set out in this letter?  
3

4 **See answer to 23 above.**

5  
6 27. Give the name and current address of all persons having information concerning this action whom you  
7 expect to call as witnesses and, for each witness, give a detailed account of the facts to which they will  
8 testify.  
9

10 **Answer:**

11 At this time, L.Martin, expects to be the sole witness testifying in this matter. Plaintiff will testify that:  
12 (1) Plaintiff and defendant entered into a rental agreement whereby defendant promised to pay \$1100  
13 monthly rent. (2) Defendant, together with 3 children, went into possession of the premises at 95 Ninth  
14 Street. (3) No rent has been paid for the month of July or any subsequent dates since. (4) Defendant was  
15 served with a valid 3-day notice offering the option of either paying the rent or vacating the premises.  
16 Defendant did neither. (5) Defendant continues in possession despite the service of a 3-day notice.  
17

18 If unsubstantiated claims are made at trial that the dilapidated conditions excused defendant from paying  
19 rent, plaintiff will testify that the premises were in lawful condition at the time the agreement was  
20 executed between plaintiff and defendant. And that whatever unlawful condition exists today is the result  
21 not of dilapidation but of malicious and wanton abuse of the premises by defendant and defendant's  
22 children.  
23

24 Plaintiff will further testify that at no time has the plaintiff refused to make justified repairs. On  
25 numerous occasions plaintiff did make repairs on the premises and sought to do so on other occasions but  
26 was barred from doing so by defendant. Further, it is unreasonable for plaintiff to be expected to  
27 constantly replace and repair intentional destruction.  
28

29 Plaintiff also will dispute defendant's assertions that the premises minor problems render them  
30 uninhabitable. In fact, the rental value of the property as is, is substantially greater than the \$1100  
31 monthly rent charged by plaintiff. That plaintiff will further testify that rents of comparable units are  
32 \$1100 or more each month.  
33

34 Plaintiff will also rebut the unsubstantiated claim of defendant that eviction proceedings were initiated  
35 solely in retaliation for defendant lodging a complaint with the County Department of Health Services.  
36 Plaintiff's motivation for evicting defendant was solely because of the latter's refusal to pay the rent  
37 required by the lease agreement.  
38

39 28. Does plaintiff have any record of repairs made on the premises located at 95 Ninth Street since the  
40 property has been owned by plaintiff? If so, give a complete account of said record or, in the alternative,  
41 attach a copy of the answers to these interrogatories.  
42

43 **Yes, records kept on a monthly basis are attached as Exhibit C. (See p. 50-54 Case File)**  
44

45 DATED: August 30, 20XX  
46

47 *Pao Hahn*  
48 \_\_\_\_\_  
49 Attorney for Plaintiff  
50

1 VERIFICATION BY PARTY (446, 2015.5 C.C.P.)  
2 STATE OF EUPHORIA, COUNTY OF BLOOM  
3

4  
5 I am the Plaintiff in the above entitled action; I have read the foregoing Answers to  
6  
7 Interrogatories and know the contents thereof; and I certify that the some is true of my own knowledge.  
8  
9 except as to those matters which are therein stated upon my information or belief, and as to those matters  
10 I believe it to be true.  
11

12 I declare, under penalty of perjury that the foregoing is true and correct.  
13

14 Executed on August 30, 20xx at Bloomington, Euphoria.  
15

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17 

18 L.MARTIN  
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## STATEMENT OF J. MAY

I often baby sit for L. Smith's children after school and in the evenings. I started babysitting for her children in January of this year. L. Smith has three children, Brian 8, Bradley 10, Bruce 13. She pays me \$50.00 a week plus meals and snacks for 5 nights a week (5-9 p.m.), Sunday through Thursday.

The house is generally very hot or very cold because of the bad heater that I do not like, and the lack of cooling. A new heater was installed early this year, but it still smells like gas when you turn it on. I've told L. this several times.

There has always been a problem with roaches in the kitchen. I've also seen mice droppings but never seen a mouse. There is one broken window in the kitchen and few, if any, screens anywhere else. We have always had trouble with the toilet plugging when I have been there. To my knowledge, the boys have not thrown stuff into the toilet. Sometimes an awful odor comes from below the house, I have no idea what it is.

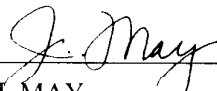
There is a plastic cover over the living room light; light is missing exposing bare wires; and light bulb in the bedroom is hanging by exposed wire. There are some other exposed wires outside the house. L. keeps the house up as best she can; it's difficult raising three boys alone. I clean up the kitchen after I make dinner for the kids - I make them help me.

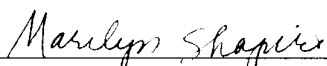
L. tells me that L. has told L. Martin about all these problems, but Martin never seems to fix things. I've never met Martin. I've met her cousin, G. James, several times when James has come over to try to repair things.

The boys have caused some trouble in the house, one of them broke a window in the kitchen and I've caught them hanging on the doors. They accidentally put a hole in the living room wall; I didn't see what happened -- Brad said they were fighting and a chair got pushed up against the walls.

The boys are normal kids, sometimes they'll run around the house, they are not angels, but they aren't devils either.

DATE: September 2, 20XX

  
\_\_\_\_\_  
J. MAY

  
\_\_\_\_\_  
Marilyn Shapiro  
Investigator

**STATEMENT OF G. JAMES**

I am L.Martin's cousin. I visit her often to give assistance with odd jobs around her house and at the rental house at 95 Ninth Street. She pays me for doing some of the work at her house, but she has never paid me for doing work at 95 Ninth Street.

L.asked me to go with her when she first showed the house to her current renter, L. Smith. The house was in very good condition then. There were no broken windows, screens, or light switches.

It is a small house and I recall that L. Smith had three children. L. Smith nevertheless seemed very pleased with the house and indicated then that she would take it.


My cousin and I spent two more days after that day cleaning the house, the floors, and windows and things like that. It looked very nice on the day L. Smith moved in.

Since the Smiths moved in, I have attempted to do repair work at the house for my cousin on four occasions. Twice, I was turned away by the "Day Sleeper" sign. I knocked and tried the bell, but no one answered the door. The other two times I looked at the clogged toilet, but I was unable to repair it. Both of these times, the house was a real mess and the boys were acting wildly, running around, throwing a ball in the house, screaming and yelling. The floors and walls were filthy and areas of kitchen walls, there was trash in the bedrooms.

Cousin L. has always tried to repair the house, but the Smith family is always causing damage quicker than Cousin L. can have it repaired.

DATED: September 2, 20XX

  
G. JAMES

  
Tom Marshall  
Investigator

**STATEMENT OF PAT JONES**

I am L. Smith's next-door neighbor. I live at 93 Ninth Street. I have lived there for the past eight years.

I know L. Smith and her children fairly well. L. is nice, but doesn't seem to be able to control the children. The three boys are always roughhousing and causing trouble. I used to go over to the house often when L. first moved in. However, L. got annoyed when I complained about the children's roughhousing and I haven't seen L. or the kids as often in the last year or so.

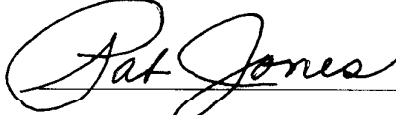
Whenever I have been over at L.' house, it seems to be a real mess. It's always dirty and run-down looking.

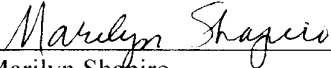
I knew Marlene Watkins who lived at 95 Ninth Street before L. Smith moved in. I used to go over to the house all the time when Marlene lived there. The house was always in good repair and clean while Marlene lived in it.

In fact, I know that the house was still in very good condition when L. and the boys first moved in because I was over frequently when they first moved into the house last year.

I declare under penalty of perjury that the foregoing is true and correct.

September 2, 20XX

  
PAT JONES

  
Marilyn Shapiro  
Investigator

## DECLARATION OF JERRY ROBERTS

I, Jerry Roberts, am the Vice President of Firm Investments, Inc., located in Bloomington, Euphoria. The Company has four sales offices in the county and one executive office in which I'm stationed. I have been with the firm since it started ten years ago. I started as a sales person with a business partner who is now the firm's president.

I'm a licensed real estate sales person and licensed real estate appraiser. I've testified in court before on several occasions regarding market value of real estate.

I went to the apartment located at 95 Ninth Street and noted the conditions as shown in the photos in the case file. After applying the cost, income and market comparison analyses, and based upon my experience in the field, I determined that the unit was not marketable.

I was paid an appraiser's fee of the \$50.00 for my services by the defendant.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
JERRY ROBERTS

DATED: 2 September 20XX

## **Jury Instructions**

### **1.0 Preliminary Instructions**

You have been selected as jurors and have taken an oath to well and truly try this cause. During the progress of the trial there will be periods of time when the Court recesses. During those periods of time, you must not talk about this case among yourselves or with anyone else.

During the trial, do not talk to any of the parties, their lawyers or any of the witnesses. If any attempt is made by anyone to talk to you concerning the matters here under consideration, you should report the fact to the court immediately.

You should keep an open mind. You should not form or express an opinion during the trial and should reach no conclusion in this case until you have heard all of the evidence, the arguments of counsel, and the final instructions as to the law which will be given to you by the court.

First, the attorneys will have an opportunity to make opening statements. These statements are not evidence and should be considered only as a preview of what the attorneys expect the evidence will be.

Following the opening statements, witnesses will be called to testify. They will be placed under oath and questioned by the attorneys. Documents and other tangible exhibits may also be received as evidence. If an exhibit is given to you to examine, you should examine it carefully, individually, and without any comment.

It is the right of counsel to object when testimony or other evidence is offered which she or he believes is not admissible.

When the court sustains an objection to a question, the jurors must disregard the question and the answer if one has been given, and draw no inference from the question or answer or

speculate as to what the witness would have said if permitted to answer. Evidence stricken from the record must likewise be disregarded.

When the Court sustains an objection to any evidence, the jurors must disregard such evidence.

When the Court overrules an objection to any evidence, the jurors must not give such evidence any more weight than if the objection had not been made.

When the evidence is completed, the attorneys will make final statements. These final statements are not evidence but are given to assist you in evaluating the evidence. The attorneys are also permitted to argue to characterize the evidence and to attempt to persuade you to a particular verdict. You may accept or reject those arguments as you see fit.

Finally, just before you retire to consider your verdict, I will give you further instructions on the law that applies to this case.

### **2.0 Final Instructions**

Members of the jury, the evidence and arguments in this case have been completed, and I will now instruct you as to the law.

The law applicable to this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts, and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case. You must not be governed or influenced by sympathy or prejudice for or against any party in this case. Your verdict must be based on evidence and not upon speculation, guess or conjecture.

From time to time, it has been the duty of the court to rule on the admissibility of evidence. You must not concern yourselves with the

reasons for these rulings. You should disregard questions and exhibits that were withdrawn or to which objections were sustained.

You should also disregard testimony and exhibits that the court has refused or stricken. The evidence that you should consider consists only of the testimony of the witnesses and the exhibits that the court has received.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should consider all the evidence in the light of your own observations and experiences in life.

Neither by these instructions, nor by any ruling or remark that I have made, do I mean to indicate any opinion as to the facts or as to what your verdict should be.

### **2.10 Opening Statements And Closing Arguments**

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove.

Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inference to be drawn from. Neither opening statements nor closing arguments are evidence and any statement or argument made by the attorneys, which is not based on the evidence, should be disregarded.

### **2.20 Credibility Of Witnesses**

You are the sole and exclusive judges of the credibility of the witnesses who have testified in this case.

In determining the credibility of witnesses you may consider any matter that has a tendency in reason to prove or disprove the truthfulness of the testimony, including but not limited to following:

- Their demeanor while testifying and the

manner in which they testify;

- The character of their testimony;
- The extent of their capacity to perceive, to recollect, or to communicate any matter about which they testify;
- The extent of their opportunity to perceive any matter about which they testify;
- Their character for honesty or veracity or their opposites;
- The existence or nonexistence of a bias, interest, or other motive;
- A statement previously made by them that is consistent with their testimony;
- A statement made by them that is inconsistent with any part of their testimony;
- The existence or nonexistence of any fact testified to by them;
- Their attitude toward the action in which they testify or toward the giving of testimony;
- Their admission of untruthfulness.

### **2.30 Direct And Circumstantial Evidence**

Evidence may be either direct or circumstantial. It is direct evidence if it proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. It is circumstantial evidence if it proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

#### **2.40 Weighing Conflicting Testimony**

You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your mind, as against the testimony of a lesser number or other evidence, which appeals to your mind with more convincing force. The testimony of one witness worthy of belief is sufficient for the proof of any fact. This does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witness, but in the relative convincing force of the evidence.

#### **2.50 Expert Witnesses (Omit if no witness qualified as an expert.)**

You have heard evidence in this case from witnesses who have testified as experts. The law allows experts to express opinions on subjects involving their special knowledge, training and skill, experience or research; but while their opinions are allowed to be given, it is entirely within the province of the jury to determine what weight shall be given their testimony. Jurors are not bound by the testimony of experts; their testimony is to be weighted as that of any other witness.

#### **2.60 Stipulations**

You must not consider as evidence any statement of counsel made during the trial; however, if counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively proved (as to the party or parties making the stipulation or admission).

#### **2.70 Stipulated Testimony**

Counsel have stipulated that if .....were called as a witness, he/she would testify as stipulated. You are to regard said stipulated testimony as if it had been given in court.

#### **2.80 Deposition Testimony**

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

#### **5.90 Burden of Proof**

In this action, the plaintiff, L. Martin, has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

1. L.Martin is the owner of the house in question here, 95 Ninth Street;
2. L.Martin entered into an agreement, either oral or written, with the defendant, L.Smith to lease the house for \$1100.00 per month; and
3. L.Smith breached this agreement by failure to pay the \$1100.00 per month rent.

The defendant, L.Smith, has the burden of establishing by a preponderance of all of the evidence all of the facts necessary to prove the following issues:

1. L.Martin breached the warranty of habitability which is implied by law in residential leases; and
2. L.Martin instituted this action in retaliation for L.Smith's complaint to the County Health Department regarding health and safety violations existing at 95 Ninth Street.

#### **6.10 Preponderance Of The Evidence**

By preponderance of the evidence is meant such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. In the event that the evidence is evenly balanced so that you are

unable to say that the evidence on either side of an issue preponderates, then your finding upon that issue must be against the party who had the burden of proving it.

In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence bearing upon that issue regardless of who produced it.

### **6.11 Implied Warranty Of Habitability**

A landlord who leases premises to a tenant for residential use impliedly warrants that the premises are habitable for residential use.

A landlord breaches the implied warranty of habitability when:

1. A material, defective condition affecting habitability exists;
2. Notice was given to the landlord within a reasonable time after the tenant discovered or should have discovered the breach of the warranty; and
3. The conditions are not caused by the conduct of the tenant or tenant's agents.

### **6.12 Material Defect**

The materiality of a defective condition is determined by the seriousness of the defect and the length of time for which the defect persists. A more serious defect need persist for a shorter period of time.

Minor housing code violations standing alone which do not affect habitability must be considered minimal and will not constitute a breach of the implied warranty of habitability.

### **6.13 Wrongful Actions Of Tenant**

Defective conditions caused by ordinary wear and tear should be considered in determining whether the landlord breached the implied warranty of habitability.

However, defective conditions caused by wrongful acts of the tenant may not be

considered in determining whether the landlord breached the implied warranty of habitability.

### **7.14 Retaliatory Eviction**

A landlord may not evict a tenant solely to retaliate against the tenant for reporting health and safety violations existing on the rental premises to health or safety authorities.

### **7.15 Award Possession**

If you find that:

1. L. Martin is the owner of the house in question here, 95 Ninth Street;
2. L. Martin entered into an agreement, either oral or written, with Lois Smith to lease the house for \$ 1100.00 per month;
3. L. Smith breached this agreement by failure to pay the \$1100.00 per month rent;
4. L. Martin did not breach the implied warranty of habitability; and
5. L. Martin did not institute this action in retaliation for L. Smith's complaint to the County Health Department.

Then you must award possession of the house to the plaintiff, L. Martin who will be entitled to recovery of the contract price.

If you find that:

1. L. Martin breached the implied warranty of habitability; or
2. L. Martin instituted this action in retaliation for L. Smith's complaint to the County Health Department regarding health and safety violations existing in the house.

Then you must award possession of the house to the defendant, L. Smith.

### **7.16 Damages For Breach of Implied Warranty of Habitability**

If you find that the plaintiff, L. Martin, breached the implied warranty of habitability, then you

must assess the amount of damages suffered by the defendant L. Smith.

The burden of proving damages rests with the defendant L. Smith, and it is up to you to determine whether damages have been proved by a preponderance of the evidence.

The damages to be awarded for breach of an implied warranty of habitability is to refund to the tenant an amount equal to the difference between the rent paid during the period of unfitness and the rent which would have been reasonable considering the existence of such defect(s). In other words, the tenant need only pay the reasonable rental value during the period of defect.

### **9.17 Concluding Instructions**

The court did not in any way and does not by these instructions give or intimate any opinions as to what has not been proven in the case, or as to what are or are not the facts of the case.

No one of these instructions states all of the law applicable, but all of them must be taken, read and considered together as they are connected with and related to each other as a whole.

You must not be concerned with the wisdom of any rule of the law. Regardless of any opinions you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instruction of the court.

### **9.18 Jurors To Deliberate**

When you go to the jury room it is your duty to discuss the case for the purpose of reaching an agreement if you can do so.

Each of you must decide the case for yourself, but should do so only after a consideration of the case with the other jurors.

You should not hesitate to change an opinion if you are convinced it is erroneous. However, you should not be influenced to decide any

question in a particular way simply because a majority of the jurors, or any of them, favor such a decision.

### **9.19 How Jurors Should Approach Their Task**

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for jurors upon entering the jury room, to make an emphatic expression of their opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, their sense of pride may be aroused, and they may hesitate to recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

You shall now retire and select one of your number to act as foreman or forewoman who will preside over your deliberations. As soon as you have agreed unanimously upon a verdict, you shall have it signed and dated by your foreperson and then shall return with it to the courtroom.

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Attorney for

COURT OF BLOOM COUNTY  
STATE OF EUPHORIA

L.MARTIN, )  
)  
Plaintiff, )  
)  
vs. )  
)  
L. SMITH, )  
)  
Defendant. )  
\_\_\_\_\_ )

NO.: 40218  
  
MOTION IN LIMINE;  
POINTS & AUTHORITIES  
IN SUPPORT THEREOF  
Date: Sept. 15, 20XX  
Time: 9:00 a.m.  
  
Department Number:

Pursuant to Section 10 of the Bloom Civil Trial Manual, \_\_\_\_\_  
requests this Court to order that \_\_\_\_\_ counsel, and each and every one of  
their witnesses, not to mention, interrogate upon, or in any other manner, convey to the jury, anything  
concerning the following facts and circumstances:

- 1. \_\_\_\_\_.
- 2. \_\_\_\_\_.
- 3. \_\_\_\_\_.

Date:

\_\_\_\_\_  
Attorney for

POINTS AND AUTHORITIES

1  
2  
3 1. By this motion, Plaintiff does not ask the Court to make a final determination now that evidence  
4 of these circumstances is inadmissible. Rather, Plaintiff seeks only to preserve the unprejudiced, status  
5 quo, until the Court, outside of the jury's presence, can make a final determination on these matters.  
6  
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9 2. "Once the bell is rung, it can never be un-rung," so that any mention of these circumstances can  
10 never be erased from juror's minds by curative instruction, should these circumstances  
11 ultimately be found inadmissible. Clemens v. American Warranty Corp., 27 Euphoria 2d 19  
12 (1987)  
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19 Further, if these circumstances ultimately are determined to be inadmissible, premature mention of them  
20 might be grounds for a mistrial or a new trial, thereby causing the litigants and the public undue expense.  
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23 DATED: September 15, 20XX      Respectfully submitted,  
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31 Attorney for  
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COURT OF BLOOM COUNTY  
STATE OF EUPHORIA

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7 L.MARTIN, ) NO.: 40218  
8 )  
9 Plaintiff, ) JURY VERDICT  
10 )  
11 vs. )  
12 )  
13 L. SMITH, )  
14 Defendant. )  
15 \_\_\_\_\_ )  
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19 We, the jury, find as follows:

20  
21 **ISSUE #1: Award of Possession**

22  
23 Possession of the house at 95 Ninth Street should be awarded to (plaintiff/defendant).  
24  
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26

27 If you have awarded possession of the house to defendant, then answer Issues #2 and #3.

28  
29 **ISSUE#2: Retaliation** Plaintiff (did/did not) institute this action in retaliation for L. Smith's complaint to  
30  
31 the County Health Department about health and safety violations existing in the house.  
32

33 **ISSUE #3: Warranty Of Habitability**

34  
35 Plaintiff (did/did not) breach the implied Warranty of Habitability. If you have awarded possession of the  
36  
37 house (Issue #1) to defendant and you have found that plaintiff breached the implied warranty of  
38  
39 habitability (Issue #3), then answer the next issue.  
40

41 **ISSUE #4: Damages**

42  
43 Defendant is entitled to a refund of \$\_\_\_\_\_ which is an amount equal to the difference between the rent  
44  
45 paid during the period of unfitness and the rent which would have been reasonable considering the  
46  
47 existence of the defect(s).  
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\_\_\_\_\_  
Foreperson

**L. Martin**  
**Income Statement**

For

95 Ninth Street  
Bloomington, Euphoria

	12 Months Ended Dec. 31, 20xx-1
Revenue	
Rent	\$ 12,600.00
TOTAL Revenue	12,600.00
Expenses	
Repair and maintenance	1,262.76
Property taxes	621.00
Insurance	850.00
Bank charges	120.00
Late fees	42.00
Depreciation	205.90
TOTAL Expenses	3,101.66
Personal draw	8,700.00
BALANCE	\$ 798.34

**L. Martin**  
**Income Statement**

For

95 Ninth Street  
Bloomington, Euphoria

	7 Months Ended Jul. 31, 20xx
Revenue	
Rent	\$ 6,600.00
TOTAL Revenue	6,600.00
Expenses	
Repair and maintenance	925.00
Property taxes	315.16
Insurance	467.50
Bank charges	70.00
Late fees	0
Depreciation	95.90
TOTAL Expenses	1,873.56
Personal draw	4,700.00
BALANCE	\$ 26.44

**L. Martin  
Income & Expense Register**

For  
95 Ninth Street, Bloomington, EU

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Check Number</u>	<u>Check Amt.</u>	<u>Rent Rec'd</u>
<b>20xx-1</b>					
<b>January</b>					
1/3	Marlene Watkins	Rent-Jan			800.00
1/15	Cash	Draw	5648	600.00	
1/31	City Natl Bank	Bank charges-Jan	on statement	10.00	
<b>February</b>					
2/5	Marlene Watkins	Rent-Feb			800.00
2/5	ABC Plumbing	Clogged toilet repair	5649	225.00	
2/15	Cash	Draw	5650	300.00	
2/17	County Assessor	Property tax-semi annual	5651	310.50	
2/20	Goodmans Lumber	Paint & cleaning supplies	5652	237.76	
2/28	City Natl Bank	Bank charges-Feb	on statement	10.00	
<b>March</b>					
3/1	L. Smith	Rent-Mar			1,100.00
3/15	Cash	Draw	5654	800.00	
3/31	City Natl Bank	Bank charges-Mar	on statement	10.00	
<b>April</b>					
4/10	Sears	Purchase & install new screen door	5655	175.00	
4/15	L. Smith	Rent-Apr			1,100.00
4/16	Sears	Purchase & install new water heater	5656	400.00	
4/17	Cash	Draw	5657	500.00	
4/30	City Natl Bank	Bank charges-Apr	on statement	10.00	
<b>May</b>					
5/12	L. Smith	Rent-May			1,100.00
5/13	State Farm Insurance	Property Insurance	5658	425.00	
5/15	Cash	Draw	5659	800.00	
5/31	City Natl Bank	Bank charges-May	on statement	10.00	
<b>June</b>					
6/14	L. Smith	Rent-Jun			1,100.00
6/20	Cash	Draw	5660	800.00	
6/30	City Natl Bank	Bank charges-Jun	on statement	10.00	
<b>July</b>					
7/1	L. Smith	Rent-Jul			1,100.00
7/15	Cash	Draw	5661	800.00	
7/31	City Natl Bank	Bank charges-Jul	on statement	10.00	

Date	Name	Description	Check Number	Check Amt.	Rent Rec'd
<b>August</b>					
8/6	L. Smith	Rent-Aug			1,100.00
8/15	Cash	Draw	5662	800.00	
8/31	City Natl Bank	Bank charges-Aug	on statement	10.00	
<b>September</b>					
9/9	L. Smith	Rent-Sept			1,100.00
9/15	Cash	Draw	5663	800.00	
9/21	ABC Plumbing	Clogged toilet repair	5664	225.00	
9/30	City Natl Bank	Bank charges-Sept	on statement	10.00	
<b>October</b>					
10/16	L. Smith	Rent- Oct			1,100.00
10/20	Cash	Draw	5665	800.00	
10/31	City Natl Bank	Bank charges-Oct	on statement	10.00	
<b>November</b>					
11/17	L. Smith	Rent-Nov			1,100.00
11/17	State Farm Insurance	Property Insurance plus late fee	5666	467.00	
11/29	County Assessor	Property tax-semi annual	5667	310.50	
11/30	Cash	Draw		800.00	
11/30	City Natl Bank	Bank charges-Nov	on statement	10.00	
<b>December</b>					
12/12	L. Smith	Rent-Dec			1,100.00
12/15	Cash	Draw	5668	900.00	
12/31	City Natl Bank	Bank charges-Dec	on statement	10.00	
TOTAL				11,358.00	12,600.00
<b>20xx</b>					
<b>January</b>					
1/16	L. Smith	Rent-Jan			1,100.00
1/20	Cash	Draw	5669	900.00	
1/31	City Natl Bank	Bank charges-Jan	on statement	10.00	
<b>February</b>					
2/25	L. Smith	Rent-Feb			1,100.00
2/25	ABC Plumbing	Clogged toilet	5670	225.00	
2/25	J. Phillips	Purchase & install new wall heater	5671	700.00	
2/28	Cash	Draw	5672	900.00	
2/28	City Natl Bank	Bank charges-Feb	on statement	10.00	
<b>March</b>					
3/1	L. Smith	Rent-Mar			1,100.00
3/15	Cash	Draw	5673	900.00	
3/31	City Natl Bank	Bank charges-Mar	on statement	10.00	

<u>Date</u>	<u>Name</u>	<u>Description</u>	<u>Check Number</u>	<u>Check Amt.</u>	<u>Rent Rec'd</u>
<b>April</b>					
4/3	L. Smith	Rent-Apr			1,100.00
4/14	County Assessor	Property tax-semi-annual	5674	315.16	
4/15	Cash	Draw	5675	900.00	
4/30	City Natl Bank	Bank charges-Apr	on statement	10.00	
<b>May</b>					
5/11	L. Smith	Rent-May			1,100.00
5/13	State Farm Insurance	Property Insurance	5676	467.50	
5/15	Cash	Draw	5677	850.00	
5/31	City Natl Bank	Bank charges-May	on statement	10.00	
<b>June</b>					
6/16	L. Smith	Rent-Jun			1,100.00
6/20	Cash	Draw	5678	850.00	
6/30	City Natl Bank	Bank charges-Jun	on statement	10.00	
<b>July</b>					
7/31	City Natl Bank	Bank charges-Jul	on statement	10.00	
TOTAL				6,610.16	6,600.00

## Photographs of Ninth Street

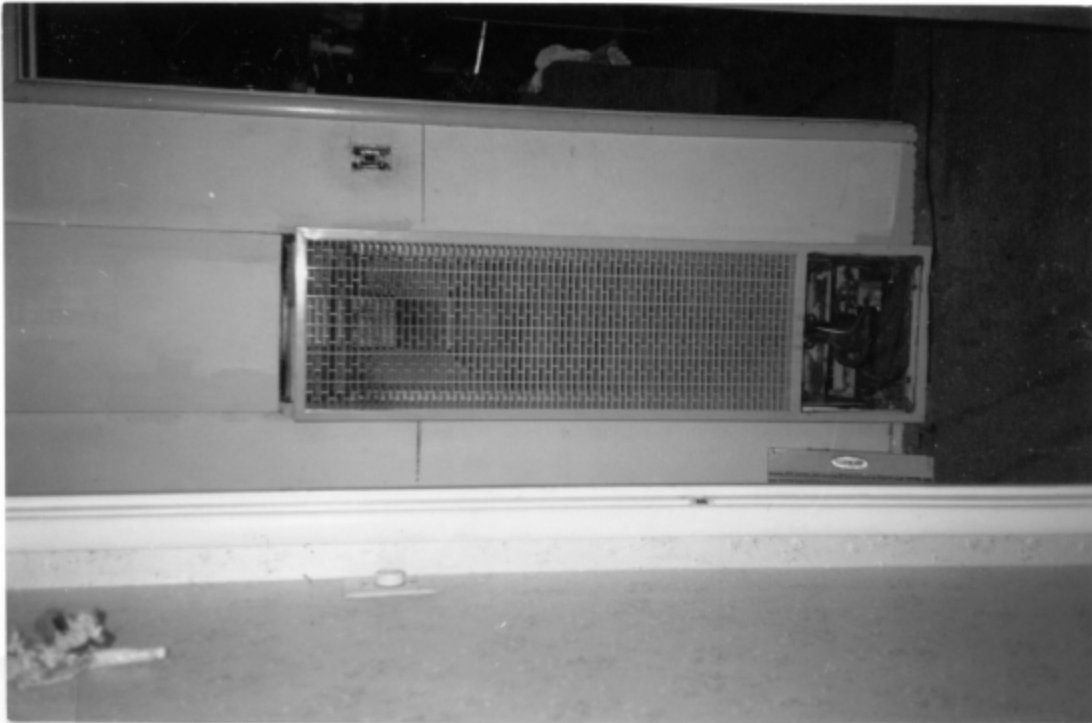
#1 A & B Two views of the living room wall heater.

#2 A Exposed wiring outside on the patio  
B Uncovered wall receptacle

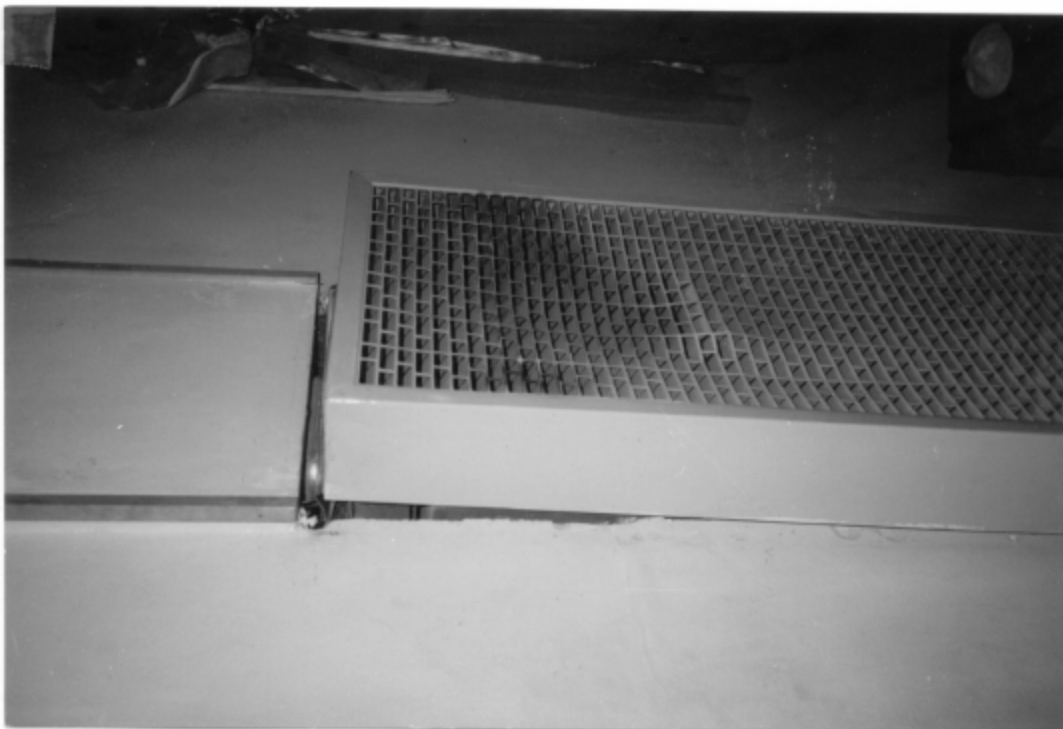
#3 A Roaches in kitchen sink  
B Roaches on kitchen floor

#4 Leaky toilet has caused linoleum to come up around the commode

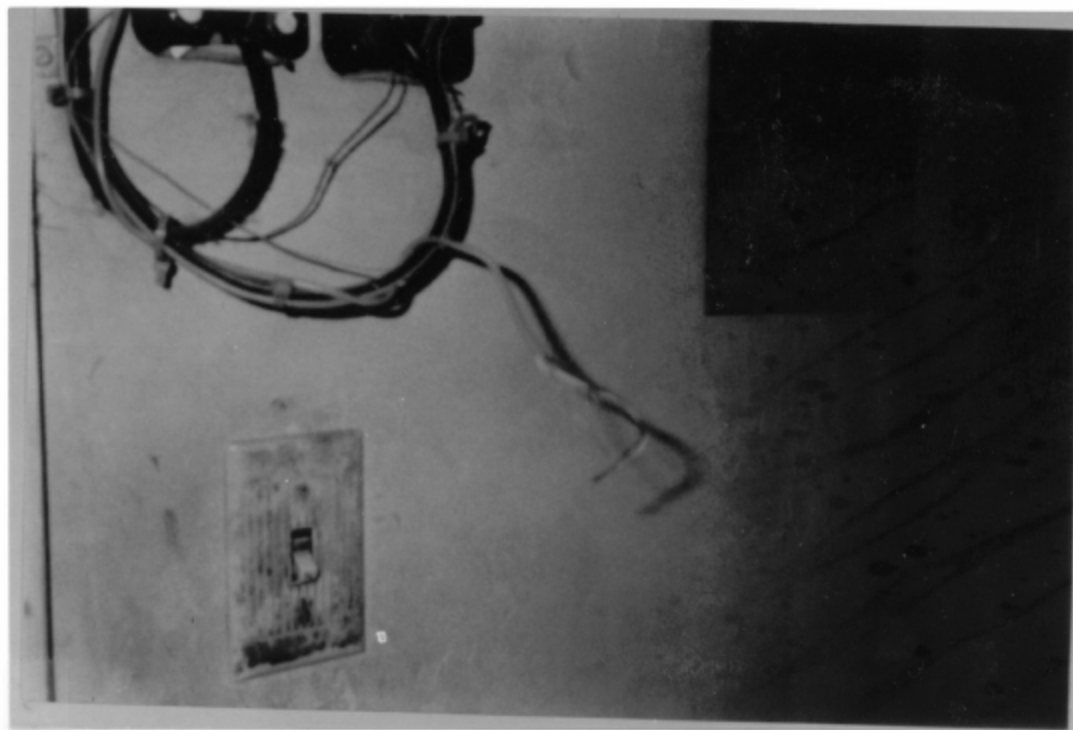
#5 Hole in the living room wall



B



A



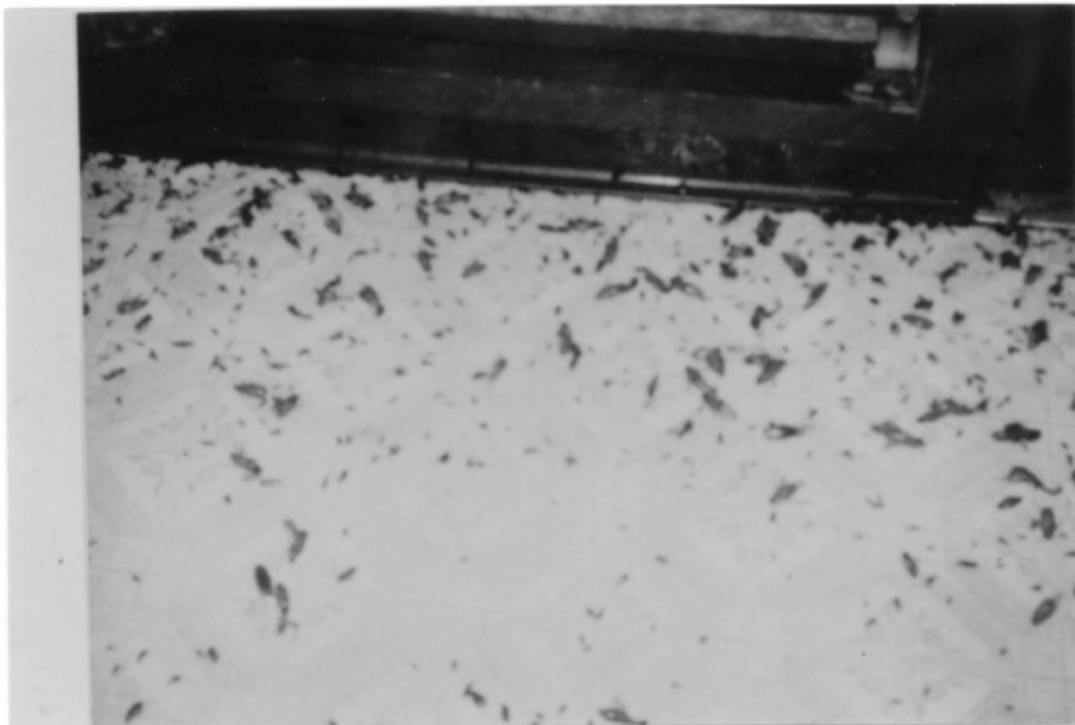
A



B



A



B



