

LANDLORD AND TENANT—EVICTION—PRESENCE OF VERMIN AS CONSTRUCTIVE EVICTION—[Missouri].—In an action for rent, the defense was raised that the tenant left because of the presence of vermin, which he neither caused nor could remedy, in such quantity as to render the premises uninhabitable. *Held*, that this condition constituted constructive eviction, relieving the tenant from liability for rent for the balance of the term.¹

The courts have found difficulty in framing a general definition of constructive eviction.² Generally speaking, a tenant will be relieved from payment of rent if the landlord creates a nuisance³ which precludes the beneficial enjoyment of the premises⁴ and causes the tenant to abandon possession.⁵ The prevalent tendency has been to hold that the mere presence of vermin does not justify the tenant in leaving the premises.⁶ In such cases the holding has been based on the theory that there had been no fraudulent representation made as to the habitability of the premises⁷ and the rule of *caveat emptor* applies;⁸ or that the tenant has not been deprived of the beneficial enjoyment thereof;⁹ or that such condition was not the fault of the lessor,¹⁰ and it would be a trespass on the tenant's premises for the landlord to remove them;¹¹ or that the lessor was not notified until after the tenant vacated.¹² On the other hand, an abandonment by the tenant has been deemed to be warranted where the vermin emanated from sources under the lessor's control¹³ and rendered the premises untenable.¹⁴ The same issue was raised in Missouri previously in *Griffith v. Freeborn*,¹⁵ where it was held that the presence of vermin did not justify the tenant in abandoning the premises. In that case, however, the lease specified that the house was rented in its present condition, and it was shown that the presence of the vermin was not attributable to the fault of the lessor. In the instant case the vermin came from sources under the exclusive control of the lessor. It is accordingly submitted that the court correctly held that constructive eviction was made out.

P. H. A.

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1. *Ray Realty Co. v. Holtzman* (Mo. App. 1938) 119 S. W. (2d) 981.
 2. See discussion in *Lancashire v. Garford Mfg. Co.* (1918) 199 Mo. App. 418, 203 S. W. 668.
 3. *Ibid.*
 4. *Griffith v. Freeborn* (1914) 181 Mo. App. 203, 168 S. W. 219.
 5. *Banister Real Estate Co. v. Edwards* (Mo. App. 1926) 282 S. W. 138.
 6. Note (1919) 4 A. L. R. 1453, 1476; 1 Tiffany, *Landlord and Tenant* (1910) 558, sec. 86.
 7. *Lack v. Wycoff* (N. Y. 1887) 11 N. Y. St. Rep. 678.
 8. *Fisher v. Lighthall* (1885) 15 D. C. 82, 54 Am. Rep. 258; *Graff v. Brewing Co.* (1908) 130 Mo. App. 618, 109 S. W. 1044; *Jacobs v. Morand* (1908) 59 Misc. 200, 110 N. Y. S. 208; *Hart v. Windsor* (Ex. 1843) 12 M. & W. 68, 152 Eng. Rep. 1114.
 9. *Ben Har Holding Corp. v. Fox* (1933) 147 Misc. 300, 263 N. Y. S. 695.
 10. *Hopkins v. Murphy* (1919) 233 Mass. 476, 124 N. E. 252.
 11. *Gunther v. Oliver* (1922) 97 N. J. L. 376, 117 Atl. 402.
 12. *California Bldg. Co. v. Drury* (1918) 103 Wash. 477, 175 Pac. 302.
 13. *Delannater v. Foreman* (1931) 184 Minn. 428, 239 N. W. 148; *Steepe v. Simpson* (1913) 80 Misc. 666, 141 N. Y. S. 863.
 14. *Barnard Realty Co. v. Bonwit* (1913) 155 App. Div. 182, 139 N. Y. S. 1050; *Steepe v. Simpson* (1913) 80 Misc. 666, 141 N. Y. S. 863.
 15. (1914) 181 Mo. App. 203, 168 S. W. 219.