

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

JAKOBI EZELL, a minor)	Case No. _____
by)	
VANESSA WILLIAMS, parent)	
)	COMPLAINT &
Plaintiff(s),)	DEMAND FOR JURY TRIAL
v.)	
)	
JERRY WOJTALEWICZ,)	
)	
Defendant.)	

Plaintiffs, Jakobi Ezell and Vanessa Williams, allege:

THE PARTIES

1. At all times material, Plaintiffs resided at 1425 Sherwood Avenue, Omaha, Douglas County, Nebraska.
2. At all times material, Defendant resides at 8730 Woolworth Avenue, Omaha, Douglas County, Nebraska.
3. Plaintiff, Vanessa Williams, is the parent of minor Plaintiff and, at the times mentioned, resided as a tenant of the Defendant in the house at 1425 Sherwood Avenue, Omaha, Douglas County, Nebraska.
4. At all times material, Defendant owned the house at 1425 Sherwood Avenue, Omaha, Douglas County, Nebraska, (the "House" hereinafter) and leased it to Plaintiff parent from November 2012 to December 2015.

PRELIMINARY STATEMENT

5. Lead poisoning remains not only the most common, but also the most societally devastating disease among young children. The toxic effects of lead poisoning include: learning disabilities, mental retardation, behavioral disorders,

- hyperirritability, lack of coordination, loss of appetite, vomiting, abdominal pain, encephalopathy with brain edema, convulsions, permanent brain damage, and even death. Even relatively low levels of exposure can cause subtle neurological changes, reduced I.Q. scores and learning disabilities.
6. Lead poisoning has been identified as one of the most important toxicological hazards facing young children in the United States.
 7. Medical researchers have found that blood lead levels as low as 10 micrograms per deciliter have a detrimental impact on learning and the central nervous system.
 8. Poisoning results not only from ingesting paint chips, but also when lead dust settles on surfaces accessible to children. The ingestion of a single small lead paint chip can cause acute poisoning in young children.
 9. Lead is particularly hazardous to young children because their bodies are rapidly developing; they absorb and retain lead more efficiently and they show adverse health effects at lower blood concentration levels than adults.

FACTS

10. On November 1, 2012 Plaintiff parent took possession of the House, pursuant to the agreement of tenancy with Defendant, and Plaintiffs later resided in the House as Defendant's tenants, until mid-December 2015.
11. On or about October 2015, while the tenancy was in full force and effect, minor Plaintiff became ill and suffered intermittently afterwards.

12. Plaintiff parent noticed that the minor Plaintiff had stopped eating, was losing weight, appeared pale, was constantly sick, irritable, and appeared delayed in his responses to external stimuli.
13. On October 19, 2015 Dr. Larry W. Figgs, Division Chief of the Douglas County Health Department Childhood Lead Poisoning Prevention Program tested minor Plaintiff and determined that he had an elevated blood lead level.
14. On January 22, 2016 Plaintiff had a follow up visit with Dr. Figgs and it was again determined that minor Plaintiff had an elevated blood lead level.
15. On December 11, 2015 the Douglas County Health Department conducted an environmental inspection and risk assessment of the House.
16. The inspection revealed that the following areas were considered a “high risk” for lead poisoning:
 - a) Kitchen: Pantry Countertop had “minimal/excessive chipping/peeling paint.”
 - b) Bathroom: Walls and wall trim had “excessive chipping/peeling paint.”
 - c) Basement Stairway: Walls, stair landings, stairs, risers, and stringer had “excessive chipping/peeling paint.”
 - d) Front Porch: had “minimal/excessive chipping/peeling paint.”
 - e) House Structure: Window trim, sills, soffits had “excessive chipping/peeling paint.”
17. The inspection lab results further revealed:
 - a) The Front Porch Floor had a lead content of 2500 milligrams per square centimeter. The EPA Clearance Standard is 40 milligrams per square centimeter.
 - b) The Basement Stairway Floor Landing had a lead content of 53 milligrams per square centimeter. The EPA Clearance Standard is 40 milligrams per square centimeter.
 - c) The Basement Stairway Stairs had a lead content of 1700 milligrams of lead per square centimeter. The EPA Clearance Standard is 250 milligrams per square centimeter.

18. Defendant was given thirty (30) days from the date of December 23, 2015 to remedy the lead issues at the House.
19. On information and belief, Plaintiffs allege that Defendant was given notice about high lead levels at the House in 2009 by the Douglas County Health Department and Defendant took no action.
20. On information and belief, Plaintiffs allege that the lead poisoning of minor Plaintiff was caused by the “chipping/peeling” paint with a high lead content at the House.
21. On information and belief, Plaintiff believes that as of the date of this Complaint, Defendant has not remedied the lead issues at the House and has re-rented the House to a pregnant tenant.

CLAIMS FOR RELIEF
COUNT I
(NEGLIGENCE OF DEFENDANT)

22. Plaintiffs repeat each and every allegation of all proceeding paragraphs with the same force and effect as if they were set forth herein.
23. Prior to the commencement of the tenancy, defendant knew, or had reason to know, that the House had been painted with paint of a high lead content.
24. Defendant knew or should have known that the paint on the House was peeling, flaking, and that this condition of the paint would create an unreasonable risk of injury to minor Plaintiff, who foreseeably could ingest the flaking and peeling paint and, as a result of such ingestion, suffer from lead poisoning.
25. Defendant had the legal duty either to remove from the House the poisonous flaking and peeling paint or to warn Plaintiffs of the danger involved.

26. Defendant failed to remove the poisonous flaking and peeling paint from the House and failed to warn Plaintiffs that the flaking and peeling paint was of high lead content and poisonous.
27. Plaintiffs had no knowledge of the high lead content of the paint at the House until December 2015, when notice of the condition was given to Plaintiff parent and Defendant by Douglas County Health Department.
28. On information and belief, Plaintiffs allege that the lead poisoning was caused by minor Plaintiff's exposure to flaking and peeling paint of high lead content in the House.
29. Defendant was negligent in failing to either remove the poisonous flaking and peeling paint at the House or to warn Plaintiffs of the high lead content in the paint and the danger involved.
30. As a direct and proximate cause of Defendant's above-mentioned negligence, the minor Plaintiff has contracted lead poisoning, which has incurred medical expenses for care and treatment, and has caused or will cause him to suffer or contract permanent injuries to his body, brain and nervous system, displacement from Plaintiffs home, severe physical pain and suffering, mental distress, and other injuries to the Plaintiffs.

**COUNT II.
(BREACH OF CONTRACT)**

31. Plaintiffs repeat each and every allegation of all proceeding paragraphs with the same force and effect as if they were set forth herein.
32. Defendant knew or should have known that by maintaining the House in a condition in which lead paint was present, he was maintaining a health hazard and

nuisance in breach of his contract with the Plaintiffs and in violation of his common law duty was a landlord.

33. By failing to take necessary measures and actions to maintain and keep the House in adequate, safe and sanitary condition, free from all nuisances and health hazards, the Defendant has subjected the Plaintiffs to an unreasonable risk of exposure to lead poisoning and has breached the terms of the lease with tenants, the Plaintiffs.
34. As a result of Defendant's breach of the express terms of Defendant's breach of the express terms of the lease, Plaintiffs have been exposed to an unreasonable risk of lead poisoning resulting in irreparable harm and injury.
35. As a direct and proximate cause of the Defendant's above-mentioned breach of contract, minor Plaintiff has contracted lead poisoning, which has incurred medical expenses for care and treatment, and has caused or will cause him to suffer or contract permanent injuries to his body, brain and nervous system, displacement from Plaintiffs home, severe physical pain and suffering, mental distress, and other injuries to the Plaintiffs.

COUNT III
(BREACH OF WARRANTY OF HABITABILITY)

36. Plaintiffs repeat each and every allegation of all proceeding paragraphs with the same force and effect as if they were set forth herein.
37. By failing to keep and maintain the House in adequate, safe and sanitary condition, free from nuisance and health hazards, the Defendant has breached the implied warranty of habitability to the Plaintiffs.

38. As a result of Defendant's breach of the implied warranty of habitability to the Plaintiffs, minor Plaintiff has been exposed to unreasonable risk of lead poisoning resulting in irreparable harm and injury.

39. As a direct and proximate cause of the Defendant's above-mentioned conduct, minor Plaintiff has contracted lead poisoning, which has incurred medical expenses for care and treatment, and has caused or will cause him to suffer or contract permanent injuries to his body, brain and nervous system, displacement from Plaintiffs home, severe physical pain and suffering, mental distress, and other injuries to the Plaintiffs.

WHEREFORE, Plaintiff respectfully requests that this court:

- A. Order that the Defendant be enjoined from renting the House to tenants until the lead paint issues have been abated;
- B. Enter judgment in favor of Plaintiff parent against Defendant for expenses related to medical treatment, drugs, and medicines, past, present and future, in an amount to be determined at trial;
- C. Enter judgment in favor of minor Plaintiff against Defendant for damages related to physical, mental, and emotional pain and suffering, past, present and future, in an amount to be determined at trial;
- D. Enter judgment in favor of minor Plaintiff against Defendant for damages related to future expenses for medical treatment, drugs, and medicines, in an amount to be determined at trial;
- E. Award to Plaintiffs the costs incurred in this suit;
- F. Punitive damages; and

G. Award to Plaintiffs such other relief as this court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues raised in this Complaint pursuant to Neb. Rev. Stat § 25-2705.

DATED in Omaha, Douglas County, Nebraska, this 6th day of May, 2016.

Jakobi Ezell & Vanessa Williams, Plaintiffs.

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TO: CLERK OF SAID COURT

Please issue Summons for service by Certified Mail upon the following:

Jerry W. Wojtalewicz
8730 Woolworth Ave.
Omaha, NE 68124

Please forward the Summons to the attorney for Plaintiff by electronic mail when available. Thank you.

Dated this 6th day of May, 2016.

Jakobi Ezell & Vanessa Williams, Plaintiffs.

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