Rent Is Rent, and Nothing Else Is Rent

Many leases contain a clause to the effect that payments made by a tenant to a landlord will be credited first to non-rent charges before any credit is given for rent. Such clauses are based on the general legal principle that a payor and payee may agree in advance on how payments will be credited. See, *e.g.*, *Berns Brothers, Inc. v. Keller*, 703 S.W.2d 507 (Mo.App. W.D. 1985). Some leases also explicitly define certain non-rent charges as rent.

However, in the context of a rent-and-possession action filed under Chapter 535 RSMo., Defendant submits that such clauses are invalid because the public policy of Missouri is that rent payments tendered by a tenant as rent cannot somehow be transmuted into payments for other charges owed under a lease and thereby result in a rent balance being owed.

§441.005(5) RSMo. defines rent as "...a stated payment for the temporary possession or use of a house, land or other real property, made at fixed intervals by a tenant or lessee to a landlord."

In relevant part, §535.020 RSMo. states: ".... The landlord or agent may, in such an action for unpaid rent, join a claim for any other unpaid sums, other than property damages, regardless of how denominated or defined in the lease, to be paid by or on behalf of a tenant to a landlord for any purpose set forth in the lease; provided that such other sums shall not be considered rent for the purposes of this chapter, and judgment for the landlord for recovery of such other sums shall not by itself entitle the landlord to an order for recovery of possession of the premises. ..."

Further, §535.040 provides a tenant with the opportunity to pay rent owed plus court costs before entry of judgment and thereby prevent entry of a judgment for possession.

Also, Supreme Court Rule 74.80 requires that judgments in rent-and-possession cases itemize "... the award of all rent, interest, late fees, attorney fees, and any other monetary amounts awarded by the judgment."

Finally, the more than century old case of *Welch v. Ashby*, 88 Mo.App. 400 (1901), holds that lease charges that are not rent cannot be made rent even by agreements or stipulations of the parties incorporated in the lease. This holding has never been overruled.

Taken together, the statutes, rule and case law evidence the public policy of Missouri that payments tendered by a tenant as rent cannot be transmuted into payments for other charges owed under a lease and thereby result in a rent balance being owed. In short, rent is rent, and nothing else is rent.