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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Clifton Newman, Circuit Court Judge

Order of the S.C. Court of Appeals, filed March 23, 2022
(Rehearing Denied, May 19, 2022)

Morgan Conley.....Petitioner,

v.

April Morganson.....Respondent.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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Respectfully submitted this 17th day of June, 2022

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June 17, 2022

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Morgan Conley, Appellant,

v.

April Morganson, Respondent.

Appellate Case No. 2019-001533

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2022-UP-115
Submitted February 1, 2022 – Filed March 23, 2022

AFFIRMED

Jeff D. Griffith, III, and Richard L. Whitt, both of Whitt
Law Firm, LLC, of Irmo, for Appellant.

S. Jahue Moore, Jr., of Moore Bradley Myers Law Firm,
of West Columbia, for Respondent.

PER CURIAM: Morgan Conley appeals the circuit court's order granting an involuntary non-suit against her pursuant to Rule 41, SCRCP. On appeal, Conley argues the circuit court erred in making certain statements during the hearing and finding she received sufficient notice pursuant to section 27-40-240(B)(3) of the South Carolina Code (2007). We affirm pursuant to Rule 220(b), SCACR.

APPENDIX 1

We hold Conley received sufficient notice when she received an email communication from her landlord. *See* S.C. Code Ann. § 27-40-240(A) (2007) ("A person has notice of a fact if: (1) *the person has actual knowledge of it*; (2) the person has received a notice or notification of it; or (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person 'knows' or 'has knowledge' of a fact if he has actual knowledge of it." (emphasis added)); S.C. Code Ann. § 27-40-240(B) (2007) ("A person 'notifies' or 'gives' a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it."); S.C. Code Ann. § 27-40-240(B)(1) (2007) ("A person 'receives' a notice or notification when . . . it comes to his attention."). We further hold any error in the making of certain statements at the hearing was harmless because Conley had sufficient notice. *See Snyder's Auto World, Inc. v. George Coleman Motor Co., Inc.*, 315 S.C. 183, 186, 434 S.E.2d 310, 312 (Ct. App. 1993) (stating an appellant must show both error and prejudice).

AFFIRMED.¹

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Morgan Conley, Appellant,

v.

April Morganson, Respondent.

Appellate Case No. 2019-001533

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. B. Ve C.J.

U. Ke J.

[Signature] J.

Columbia, South Carolina

cc:

Richard L. Whitt, Esquire

Jeff D. Griffith, III, Esquire

S. Jahue Moore, Jr., Esquire

The Honorable Clifton Newman

FILED
May 19 2022

APPENDIX 3

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2019-001533

Morgan Conley.....Appellant/Petitioner,

v.

April Morganson.....Respondent.

PETITION FOR REHEARING

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APPENDIX 4

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INTRODUCTION

Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022, dismissing Appellant/Petitioner's Appeal.

This Court failed to comply with "Bright Line" rules, often cited by this Court, concerning proper statutory construction. This Court improperly agreed with Respondent and the Lower Court, that an email communication constitutes actual notice under S.C. Code Ann., §27-40-240(B)(1), (1976, as amended), and thereby this Court's Order ignores the specific requirements of S.C. Code Ann., §27-40-240(B)(3), (1976, as amended).

In a review of statutory construction by this Court the following applies, "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *Boiter v. South Carolina Dept. of Transp.*, 712 SE 2d 401 (2011). Also, in a review of statutory construction this Court cannot choose a general provision S.C. Code Ann., §27-40-240(B)(1), over a specific provision S.C. Code Ann., §27-40-240(B)(3), *Skinner v. Westinghouse Elec. Corp.*, 716 SE 2d 443 (2011); *Hembree v. \$1,847.00 US Currency*, 743 SE 2d 864 (Ct. App. 2013).

This Court's Order highlights this Court's adoption of the Respondent's position in the Lower Court. Namely, that Appellant/Petitioner received proper Notice, when Appellant/Petitioner only received email communications and not the proper Notice, required by S.C. Code Ann., §27-40-240(B)(3), (1976, as amended)¹.

In this Court's Order on page "5", herein, this Court stated that Appellant/Petitioner, "...[argued] that the circuit court erred...finding [Appellant] received sufficient notice pursuant to section 27-40-240(B)(3) of the South Carolina Code (2007)." On its face, S.C. Code Ann., §27-40-240(B)(3), requires in pertinent part, "...in the case of the tenant, [Notice] is delivered in hand to the tenant or mailed by registered or certified mail to the tenant..." Note, that the tenant in this case did not receive Notice by hand-delivery, did not receive Notice by Registered Mail, nor did the tenant receive Notice by Certified Mail.

¹ In pertinent part, §27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant...."

INTRODUCTION (Cont.)

Finally, this Court's Order finds as follows, "We further hold any error in the making of certain statements at the hearing was harmless because Conley had sufficient notice. See *Snyder's Auto World, Inc. v. George Coleman Motor Co., Inc.*, 315 S.C. 183, 186, 434 S.E.2d 310, 312 (Ct. App. 1993) (stating an appellant must show both error and prejudice)."

Appellant/Petitioner has outlined herein numerous errors by the Lower Court and Appellant/Petitioner specifically alleged prejudice. Specifically, Appellant/Petitioner was prejudiced by Respondent's unlawful retention of Appellant/Petitioner's prepaid rent and security deposit and the prejudice was described in Appellant/Petitioner's "Statement of the Facts" on page "6" in Appellant's Final Brief filed with this Court on January 9, 2021, "The Respondent/Landlord never returned Appellant/Tenant's security deposit or prepaid rent...."

THIS COURT'S ORDER FOR WHICH REHEARING IS SOUGHT

“PER CURIAM: Morgan Conley appeals the circuit court's order granting an involuntary non-suit against her pursuant to Rule 41, SCRPC. On appeal, Conley argues the circuit court erred in making certain statements during the hearing and finding she received sufficient notice pursuant to section 27-40-240(B)(3) of the South Carolina Code (2007). We affirm pursuant to Rule 220(b), SCACR. We hold Conley received sufficient notice when she received an email communication from her landlord. See S.C. Code Ann. § 27-40-240(A) (2007) ("A person has notice of a fact if: (1) the person has actual knowledge of it; (2) the person has received a notice or notification of it; or (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person 'knows' or 'has knowledge' of a fact if he has actual knowledge of it." (emphasis added)); S.C. Code Ann. § 27-40-240(B) (2007) ("A person 'notifies' or 'gives' a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it."); S.C. Code Ann. § 27-40-240(B)(1) (2007) ("A person 'receives' a notice or notification when . . . it comes to his attention."). We further hold any error in the making of certain statements at the hearing was harmless because Conley had sufficient notice. See *Snyder's Auto World, Inc. v. George Coleman Motor Co., Inc.*, 315 S.C. 183, 186, 434 S.E.2d 310, 312 (Ct. App. 1993) (stating an appellant must show both error and prejudice).

AFFIRMED.1

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.”

RESPONDENT'S MISLEADING ARGUMENT IN HER BRIEF

Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022, dismissing Appellant/Petitioner's Appeal:

This Court should note that, throughout Respondent's Brief, Respondent attempted to disguise the fact that the **Respondent/Landlord only sent electronic mail** to the Appellant/Petitioner. The **Respondent/Landlord failed** to send the required Notice to the Appellant/Petitioner by delivery in hand, or by mailing the Notice to the Appellant/Petitioner, by Registered or Certified Mail. See, S.C. Code Ann., §27-40-240(B)(3)², (1976, as amended). It is uncontroverted that the **Respondent/Landlord failed** to hand-deliver the Notice and the **Respondent/Landlord failed** to mail the Notice to the Appellant/Petitioner by Registered or Certified Mail. Despite Respondent/Landlord's failure to comply with South Carolina Law, Respondent/Landlord's Brief is replete with misleading references, as follows.

- On page "4" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...written digital communication...."
- On page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...a written communication...."
- Also, on page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...the actual written communication...."
- On page "6" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "The written communication...."
- On page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...written notification....."
- Also, on page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...the written communication....."
- On page "8" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...a written communication...."

Emphasis supplied in all of the above-referenced quotes.

² In pertinent part, §27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant...."

IMPROPER STATEMENTS MADE BY LOWER COURT

Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022, dismissing Appellant/Petitioner's Appeal.

- **The Trial Judge opined** that he believed that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send electronic mail, not by hand-delivery, Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), that Notice be by hand-delivery, or by Registered or Certified Mail, (R. p. 34 lines 10-20); (R. p. 44).
- **The Trial Judge stated** that he was justified in changing the meaning of a clear and unambiguous Statute, by the following comments. Namely, that in Trial Judge's opinion, a tenant attempting to enforce the plain and ordinary meaning of the Statute, §27-40-240(B)(3), against "...unsuspecting landlords...", was an attempt by a tenant to "...pin[the Act's provision] on a Landlord", despite the fact that the requirements exist today in the Act, (R. p. 36 lines 19-25).
- **The Trial Judge stated**, "...so I think it is time to simplify, clarify, modernize, and revise the laws concerning landlords and tenants." (R. p. 34 lines 11-13). This statement by the Trial Judge that he intended, in effect, to simplify, clarify, modernize and revise the South Carolina Residential Landlord and Tenant Act, is remarkable. Obviously, the Lower Court was without authority to take the actions he took at the conclusion of the Appellant/Tenant's case, "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 SE 2d 576 (2000). "Where a statute's language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning." Hodges v. Rainey, 533 SE 2d 576 (2000).
- **The Trial Judge's Order stated** that, "The South Carolina Landlord/Tenant (*sic*) Act certainly requires certified mail notification in certain instances but, as set forth above, and as is the case in this situation, the Plaintiff clearly received email notification of all aspects concerning the parties lease." (R. p. 3).
- **The Trial Judge stated** that he believed that the Act dated back to 1986 and that e-mail technology did not exist in 1986. (R. p. 34 lines 10-20). The Trial Judge then stated that it was acceptable for the Respondent/Landlord to send electronic mail to the Appellant/Tenant about the Respondent/Landlord's confiscation of both the Appellant/Tenant's prepaid rent and security deposit, (R. p. 34 lines 10-20). The Trial Judge found it was acceptable to send the Notice by electronic mail, which was not hand-delivered, or mailed by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (R. pp. 1-4).

ARGUMENT

Based on the improper statements by the Trial Judge shown on page “7”, herein, which highlighted the Lower Court’s errors, at the conclusion of the Appellant/Petitioner’s case, the Trial Judge granted the Respondent/Landlord’s Motion for Directed Verdict (R. pp. 1-3). The Trial Judge’s grant of a Directed Verdict was erroneous and controlled by the Trial Judge’s refusal to enforce the plain and ordinary requirements of the South Carolina Residential Landlord and Tenant Act, (hereinafter sometimes referred to as, the “Act”). Namely, that a Notice be hand-delivered, or mailed by Registered or Certified Mail³, as required by the Statute, (R. p. 44). The Trial Judge stated that he believed that the Act dated back to 1986 and that e-mail technology did not exist in 1986. (R. p. 34 lines 10-20). The Trial Judge then stated that it was acceptable for the Respondent/Landlord to send electronic mail to the Appellant/Petitioner about the Respondent/Landlord’s confiscation of both the Appellant/Petitioner’s prepaid rent and security deposit, (R. p. 34 lines 10-20). The Trial Judge improperly found it was acceptable to send the Notice to Appellant/Petitioner by electronic mail, which was not hand-delivered, or mailed by Registered or Certified Mail, to the Appellant/Petitioner, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), (R. pp. 1-4).

“Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” Hodges v. Rainey, 533 SE 2d 576 (2000).

³ S.C. Code Ann., §27-40-240(B)(3), (1976, as amended).

ARGUMENT (Cont.)

“The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733 (Ct. of App. 2005).

‘Where a statute’s language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning.” Hodges v. Rainey, 533 SE 2d 576 (2000).

Accordingly, it was improper for the Trial Judge to impose another meaning at the conclusion of Appellant/Petitioner’s case, namely that electronic mail satisfied the Statute’s requirement that Notice to the tenant be, hand-delivered, or mailed by Registered or Certified Mail, (R. p. 34 lines 10-20).

“If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it dehors the statute.” Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970); Abell et al. v. Bell et al. 91 SE 2d 548 (1956); “...if legislative intent is clearly apparent on the face of a statute, the court may not embark upon a search for [legislative intent].” State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).

The Trial Judge noted that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send Notice by electronic mail, not hand-delivered, or mailed by Registered or Certified Mail, to the Appellant/Petitioner, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), that Notice be hand-delivered or be mailed, by Registered or Certified Mail, (R. p. 34 lines 10-20).

ARGUMENT (Cont.)

“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 533 SE 2d 576 (2000).

**RESPONDENT FAILED TO RESPOND TO THE FOLLOWING ISSUES
IN HER BRIEF.**

(Appellant/Petitioner respectfully submits that this Court misapprehended or overlooked, *inter alia*, the following in its Order of March 23, 2022)

The Respondent failed to respond to the following issues in her Brief.

Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See, First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996), if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds.

- I. **THE LOWER COURT ERRED WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS.**
- II. **THE LOWER COURT ERRED WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3).**
- III. **THE LOWER COURT ERRED WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL.**

CONCLUSION

Based on the foregoing (i) applicable case law, (ii) statutes, and (iii) the facts of this case, this Court should rehear and reconsider its decision of March 22, 2022. This Court should Reverse the Lower Court's decision and Remand this matter for a decision consistent with this Court's order granting Rehearing.

Respectfully Submitted,

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April 6, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Clifton Newman, Circuit Court Judge

Case No. 2016-CP-40-04139
Appellate Case No. 2019-001533

Morgan Conley, ...Appellant,

v.

April Morganson, ...Respondent.

RETURN TO APPELLANT'S PETITION FOR REHEARING

Respondent hereby requests that this Court deny Appellant's Petition for Rehearing. The legal analysis set forth in this Court's Order of March 23, 2022 is correct and the matters set forth in Appellant's Petition for Rehearing are the same arguments originally raised by the Appellant.

As such, the Respondent respectfully seeks an Order of this Court denying the Appellant's Petition for Rehearing.



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April 11, 2022

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS?
- II. DID THE LOWER COURT ERR WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3)?
- III. DID THE LOWER COURT ERR WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT OR MAILED BY REGISTERED OR CERTIFIED MAIL?
- IV. DID THE LOWER COURT ERR WHEN THE LOWER COURT STATED THAT BECAUSE THE RESIDENTIAL LANDLORD TENANT ACT WAS ENACTED IN 1986 (*sic*), THE UNAMBIGUOUS REQUIREMENT IN S.C. CODE ANN. § 27-40-240(B)(3), FOR "NOTICE" COULD BE SUPERSEDED BY THE LOWER COURT'S FINDING THAT, "E-MAIL" NOTICE COULD BE SUBSTITUTED FOR THE STATUTE'S CLEAR REQUIREMENT FOR NOTICE BE DELIVERED IN HAND TO THE TENANT OR MAILED BY REGISTERED OR CERTIFIED MAIL?

STATEMENT OF THE CASE

This matter began with the filing of the Complaint of Appellant/Tenant, Morgan Conley in the Richland County Court of Common Pleas, First Amended on May 24, 2017 (R. pp. 5-11). The Respondent/Landlord refusal to return Appellant/Tenant's prepaid rent of \$920.00, and security deposit of \$1,200.00, caused Appellant/Tenant to file a Complaint, which contained Causes of Action for Breach of Contract, and Violations of the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann., §27-40-240, §27-40-330(b), §27-40-410(a), §27-40-410, §27-40-430, and §27-40-620, (1976, as amended), (R. pp. 5-11). The Respondent/Landlord filed her Answer and Counterclaim to the First Amended Complaint on June 16, 2017, (R. pp. 12-14). A bench trial was held before the Honorable Clifton Newman on September 28, 2018, (R. p. 15). At the conclusion of that Trial the Respondent/Landlord's Motion for Directed Verdict was granted (R. pp. 1-4). Also, at the conclusion of the Appellant/Tenant's case, the Respondent/Landlord affirmatively abandoned her Counterclaim, (R. p. 3). Thereafter, the Trial Court issued its Order of August 16, 2019, (R. pp. 1-4). Appellant/Tenant's Notice of Appeal followed on September 11, 2019. Appellant/Tenant's Appeal follows.

STATEMENT OF THE FACTS

Appellant/Tenant and Respondent/Landlord entered into a Rental Agreement in Richland County in May, 2016, (R. p. 37). The Rental Agreement expressly attorned to the South Carolina Residential Landlord and Tenant Act, (R. pp. 37-43). At that time, Appellant/Tenant deposited \$1,200 with the Respondent/Landlord as a security deposit and \$920 was also given to Respondent/Landlord, for the prepaid rent (R. p. 17 lines 13-16). Appellant/Tenant alleged that the Respondent/Landlord failed to deliver the rental premises and demanded a return of Appellant/Tenant's security deposit and prepaid rent (R. p. 17 line 19- p. 18 line 11). In fact, Appellant/Tenant never moved into the Rental Premises, (R. p. 17 lines 19-20). Respondent/Landlord refused to return Appellant/Tenant's security deposit and prepaid rent, despite Appellant/Tenant's written demand for return of the same, (R. p. 17 line 13 – p. 18 line 5). The Appellant/Tenant provided the Respondent/Landlord with a forwarding address, (R. p. 29 lines 18-20). Thereafter, Appellant/Tenant filed a Complaint against Respondent/Landlord in the Richland County Court of Common Pleas, (R. pp. 5-11).

The Respondent/Landlord never returned Appellant/Tenant's security deposit or prepaid rent and the Respondent/Landlord did not provide a written reconciliation of Respondent/Landlord's confiscation of Appellant/Tenant's security deposit and prepaid rent, (R. p. 18 lines 3-11).

STATEMENT OF THE FACTS (Cont.)

The Respondent/Landlord's Answer to Appellant/Tenant's Complaint reveals that Respondent/Landlord does not allege or plead that Respondent/Landlord provided the required Notice by Mail¹, by Registered or Certified Mail as required under the South Carolina Residential Landlord and Tenant Act, (R. pp. 12-14); (R. p. 44).

In fact, it is uncontroverted that the Respondent/Landlord failed to provide Notice by Mail, by Registered or Certified Mail to the Appellant/Tenant of her confiscation of the Appellant/Tenant's security deposit and prepaid rent (R. p. 18 lines 3-11); (R. p. 27 lines 2-3). It is further uncontroverted that S.C. Code Ann., §27-40-240(B)(3), required Notice by Mail, by Registered or Certified Mail (R. p. 44). At Trial, the Trial Judge refused to enforce the plain and ordinary requirements of the Act, that Notice be by Mail, Registered or Certified Mail, (R. pp. 2-3); (R. p. 44).

The Trial Judge opined that he believed that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send electronic mail, not by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), that Notice be by Mail, by Registered or Certified Mail, (R. p. 34 lines 10-20); (R. p. 44).

¹ The Statute §27-40-240(B)(3), actually reads, "...**delivered in hand** to the tenant or mailed by registered or certified mail to the tenant...", (emphasis not in original). However, it is uncontroverted that **there was no testimony, or claim** before the Lower Court that Notice was hand-delivered to the Appellant/Tenant.

STATEMENT OF THE FACTS (Cont.)

The Trial Judge stated that he was justified in changing the meaning of a clear and unambiguous Statute, by the following comments. Namely, that in Trial Judge's opinion, a tenant attempting to enforce the plain and ordinary meaning of the Statute, §27-40-240(B)(3), (1976, as amended), against "...unsuspecting landlords...", was an attempt by a tenant to "...pin[the Act's provision] on a Landlord", despite the fact that the requirements exist today in the Act, (R. p. 36 lines 19-25).

Appellant/Tenant argues, based on well settled South Carolina Law, that the Trial Judge was bound to give effect to the expressed intent of the South Carolina Legislature and that the plain language of the Statute may not be disregarded by the Trial Judge.

The Trial Judge thereafter issued a written Order, (R. pp. 1-4), wherein the Trial Judge expressly limited that statute's operation and the Trial Judge refused to enforce the clear terms of the Statute according to the terms' plain and ordinary meaning, all in non-compliance with South Carolina case law.

ARGUMENT

I. THE LOWER COURT ERRED WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS.

The Trial Judge stated, "...so I think it is time to simplify, clarify, modernize, and revise the laws concerning landlords and tenants." (R. p. 34 lines 11-13). This statement by the Trial Judge that he intended, in effect, to simplify, clarify, modernize and revise the South Carolina Residential Landlord and Tenant Act, is remarkable. Obviously, the Lower Court was without authority to take the actions he took at the conclusion of the Appellant/Tenant's case, "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 SE 2d 576 (2000). "Where a statute's language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning." Hodges v. Rainey, 533 SE 2d 576 (2000).

Consistent with the Trial Judge's statement that he intended to, *inter alia*, modernize and revise S.C. Code Ann., §27-40-240(B)(3), the Trial Judge's Order stated that, "The South Carolina Landlord/Tenant (*sic*) Act certainly requires certified mail notification in certain instances but, as set forth above, and as is the case in this situation, the Plaintiff clearly received email notification of all aspects concerning the parties lease." (R. p. 3). The Trial Judge erred by finding that electronic mail could be substituted for the Statute's requirement that Notice be mailed by Registered or Certified Mail, (R. p. 44).

II. THE LOWER COURT ERRED WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3).

At the conclusion of the Appellant/Tenant's case, the Trial Judge granted the Respondent/Landlord's Motion for Directed Verdict (R. pp. 1-3). The Trial Judge's grant of a Directed Verdict was erroneous and controlled by the Trial Judge's refusal to enforce the plain and ordinary requirements of the South Carolina Residential Landlord and Tenant Act, (hereinafter sometimes referred to as, the "Act"). Namely, that a Notice be mailed, by Registered or Certified Mail², as required by the Statute, (R. p. 44). The Trial Judge stated that he believed that the Act dated back to 1986 and that e-mail technology did not exist in 1986. (R. p. 34 lines 10-20). The Trial Judge then stated that it was acceptable for the Respondent/Landlord to send electronic mail to the Appellant/Tenant about the Respondent/Landlord's confiscation of both the Appellant/Tenant's prepaid rent and security deposit, (R. p. 34 lines 10-20). The Trial Judge found it was acceptable to send the Notice by electronic mail, which was not mailed by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), (R. pp. 1-4).

"Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 533 SE 2d 576 (2000).

"The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733 (S.C. Ct. of App. 2005).

'Where a statute's language is plain and unambiguous, conveying a clear and definite meaning, the trial court has no right to impose another meaning.' Hodges v. Rainey, 533 SE 2d 576 (2000).

Accordingly, it was improper for the Trial Judge to impose another meaning at the conclusion of Appellant/Tenant's case, namely that electronic mail satisfied the Statute's requirement that Notice be mailed by Registered or Certified Mail, (R. p. 34 lines 10-20).

² S.C. Code Ann., §27-40-240(B)(3), (1976, as amended).

III. THE LOWER COURT ERRED WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL.

The Trial Judge's comments in open Court, show that the Trial Judge intended to change and limit the meaning of a clear and unambiguous Statute, by the following comments. Namely, that in the Trial Judge's opinion, a tenant's attempting to enforce the plain and ordinary meaning of the Statute³, against "...unsuspecting landlords...", was an attempt by a tenant to "...pin[the Act's provision] on a Landlord", despite the fact that the requirements exist today in the Act, (R. p. 36 lines 19-25). Appellant/Tenant argues that the Trial Judge was bound to give effect to the expressed intent of the South Carolina Legislature and that the plain language of the Statute may not be disregarded by the Trial Judge.

"If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it de hors the statute." Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970); Abell et al. v. Bell et al. 91 SE 2d 548 (1956); "...if legislative intent is clearly apparent on the face of a statute, the court may not embark upon a search for [legislative intent]." State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).

³ S.C. Code Ann. §27-40-240(B)(3), (1976, as amended).

IV. THE LOWER COURT ERRED WHEN THE LOWER COURT STATED THAT BECAUSE THE RESIDENTIAL LANDLORD TENANT ACT WAS ENACTED IN 1986 (*sic*), THE VERBATIM REQUIREMENT IN S.C. CODE ANN. § 27-40-240(B)(3), FOR "NOTICE" COULD BE SUPERSEDED BY THE LOWER COURT'S FINDING THAT, "E-MAIL" NOTICE COULD BE SUBSTITUTED FOR THE STATUTE'S CLEAR REQUIREMENT FOR NOTICE TO BE DELIVERED IN HAND TO THE TENANT OR, MAILED BY REGISTERED OR CERTIFIED MAIL.

The Trial Judge noted that the South Carolina Residential Landlord and Tenant Act, dated back to 1986, and that email technology did not exist in 1986 and it was now acceptable for the Respondent/Landlord to send Notice by electronic mail, not mailed by Registered or Certified Mail, to the Appellant/Tenant, despite the plain and ordinary requirement from the Statute S.C. Code Ann. §27-40-240(B)(3), (1976, as amended), that Notice be mailed, by Registered or Certified Mail, (R. p. 34 lines 10-20). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 533 SE 2d 576 (2000).

"The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Eagle Container Co., LLC v. County of Newberry 622 SE 2d 733 (S.C. Ct. of App. 2005).

"If the intent of the legislature be clearly apparent from its language, the court may not embark upon a search for it de hors the statute." Timmons v. Tricentennial Comm., 175 SE 2d 805 (1970); Abell et al. v. Bell et al. 91 SE 2d 548 (1956); "...if legislative intent is clearly apparent on the face of a statute, the court may not embark upon a search for [legislative intent]." State v. 192 Coin-Op. Video Game Mach., 525 SE 2d 872 (2000).

Until and unless both houses of the General assembly approve, and the governor signs, a bill amending the statute, the unambiguous terms of the statute control, regardless of any unilateral assessment by the Trial Court that the duly enacted law is antiquated.

CONCLUSION

Based on the foregoing, this Court should reverse the Trial Court's Directed Verdict and remand this case to the Trial Court for Trial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard L. Whitt". The signature is written in a cursive, flowing style.

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Attorneys for Appellant.

January 9, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139

Appellate Case No. 2019-001533

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SC Court of Appeals

Morgan Conley.....Appellant,

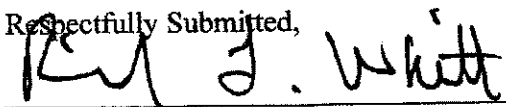
v.

April Morganson.....Respondent.

CERTIFICATE OF COMPLIANCE

I, Richard L. Whitt, as counsel for Appellant, hereby certify that the Final Brief of Appellant and the Final Reply Brief of Appellant complies with Rule 211(b), of the South Carolina Appellate Court Rules.

Respectfully Submitted,



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January 9, 2020

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S.C. Code Ann. § 27-40-240

STATEMENT OF ISSUES ON APPEAL

- I. Was the lower Court correct in granting the Respondent's Motion for involuntary non-suit and in finding the Appellant breached her lease agreement with the Respondent; was provided sufficient notice of the Respondent's intention to mitigate her damages; was provided sufficient notice of the Respondent's decision to apply the Appellant's security deposit toward unpaid rent; and was otherwise properly treated under the parties' lease agreement?

STATEMENT OF THE FACTS

In May of 2016, the Appellant/Tenant and Respondent/Landlord entered into a written lease agreement (Transcript of Record, Page 13 Line 21). The lease was for a period of one year and required the Appellant to pay rent for one year (Transcript of Record, Page 14 Line 16).

The parties fully executed the written lease agreement and the Appellant acknowledged at trial that she signed the lease agreement without threat or coercion.

Prior to moving into the Respondent's home, the Appellant emailed the Respondent and asked to "break the lease" (Transcript of Record, Page 16 Line 19). In response, the Respondent informed the Appellant that she would not be willing to break the lease (Transcript of Record, Page 22 Line 22).

Through digital communication, the Appellant informed the Respondent that she would not be moving into the property and that she could not perform under the lease agreement. By written digital communication, the Respondent informed the Appellant that she would attempt to mitigate her damages by finding another tenant (Transcript of Record, Page 27 Line 17).

The parties' lease agreement was to begin in May of 2016. The Respondent was able to find a new tenant in July of 2016 (Transcript of Record, Page 28 Line 17). The Respondent lost three months of rent as a result of the Appellant's decision to breach the lease agreement.

The Appellant acknowledges her breach of the lease agreement (Transcript of Record, Page 30 Line 12).

When the Appellant signed her lease agreement, she paid a first month's rental payment as well as a \$1,200.00 security deposit. As a result of the Appellant's breach of contract, the Respondent applied the Appellant's security deposit toward the two months of rent she did not receive. The written lease agreement signed by the parties provides that the Respondent may apply the security deposit toward any unpaid rent so long as the Appellant is provided notice and an itemization (Transcript of Record, Page 33 Line 6). The Respondent provided the Appellant with a written communication indicating that she would be applying the security deposit toward the unpaid rent and, in doing so, explained exactly why the security deposit was being held and what it was being applied for (Transcript of Record, Page 36 Line 1).

The Appellant received the actual written communication from the Respondent concerning her intention to apply the security deposit toward the unpaid rent (Transcript of Record, Page 37 Line 25). Despite receiving the notification, and through this lawsuit, the Appellant seeks the return of her security deposit based upon the fact that she did not receive a certified letter as opposed to a digital communication.

ARGUMENT

By her own admission, the Appellant breached the lease between the parties at issue in this matter (Transcript of Record, Page 30 Line 19/Page 30 Line 21). The Appellant acknowledges not only breaching the lease but also owing the Respondent three months' worth of unpaid rent (Transcript of Record, Page 30 Line 21). The parties' lease agreement provides that in the event of a breach and in the event of a failure to pay rent during the breach, the Appellant's security deposit may be applied toward any unpaid rent. (Defense trial exhibit #2 was clearly offered and accepted into evidence during trial as made apparent from the trial transcript. However, the exhibit did not appear in the Respondent's version of the Transcript of Record.)

Throughout this matter, the parties communicated extensively through email. The Respondent clearly communicated to the Appellant she wished to abide by the parties' written lease agreement (Transcript of Record, Page 22 Line 22). Despite this, the Appellant breached the agreement and now seeks the return of her security deposit despite owing rental income to the Respondent.

The Respondent made every effort to mitigate her damages under the circumstances. Beginning in May of 2016, the Respondent attempted to find another tenant. The Respondent was successful in July of 2016 (Transcript of Record, Page 27 Line 17). Regardless, two months' of rent remained due.

Very clearly, and by electronic communication, the Respondent informed the Appellant of her decision to apply the security deposit toward the unpaid rent. The written communication was clear and received by the Appellant (Transcript of Record, Page 36 Line 1).

The Appellant's position is that she breached a lease agreement, failed to pay rent, owes the Respondent money, yet is entitled to the return of her security deposit based upon the fact that she received an email instead of a certified letter.

What is important to note is that the Appellant received written notification of the Respondent's intention to apply the security deposit toward the unpaid rent. There is absolutely no doubt that the communication was received. The Appellant acknowledged receipt of the electronic communication at trial. Her position, at trial, was that the communication should have been by way of a certified letter (Transcript of Record, Page 36 Line 1).

The language of the parties' lease agreement controls. If the Respondent decides to apply the Appellant's security deposit toward unpaid rent, the lease simply requires that notice and an accounting be given. Notice and an accounting was provided to the Appellant (Transcript of Record, Page 36 Line 1).

The parties are allowed the opportunity to contract between themselves. South Carolina Code §27-40-310 provides that "a landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties."

In this case, the written lease agreement only provides that the parties may communicate by written communication. The actual lease agreement does not require communication by certified mail.

The Appellant argues that the South Carolina Landlord Tenant Act requires certified mail communication when dealing with security deposits. Even if this were so, South Carolina Code §24-40-310 permits a landlord and tenant to negotiate and create their own terms and conditions of a lease. Here, no certified mail requirement is set forth in the written lease and, as such, the

written communication sent by the Respondent to the Appellant concerning the security deposit satisfies the terms and conditions of the lease.

Additionally, South Carolina Code §27-40-240(b) provides that "a person notifies or gives a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person receives a notice or notification when it comes to his attention; or in the case of the landlord is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the tenant as the place for receipt of the communication; or in the case of the tenant, it is delivered in the hand, to tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the presence of the designation to the tenant's last known place of residence. Proof of mail pursuant to this subsection constitutes notice without proof of receipt." (emphasis added) According to South Carolina Code §27-40-240, notice is accomplished if the matter comes to the attention of a party. There is absolutely no doubt that the Appellant received a written communication concerning her security deposit (Transcript of Record, Page 36 Line 1). This is acknowledged by the Appellant herself (Transcript of Record, Page 37 Line 25). The parties exchanged multiple emails throughout the negotiation of this written lease and during its termination.

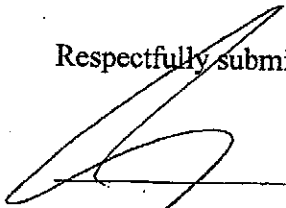
The Appellant would have this Court reverse the lower Court's decision based upon an absurdity. The Appellant acknowledges having received notice from the Respondent concerning her security deposit; however, the Appellant argues that because the notice was not a certified letter, the lower Court should have returned her security deposit despite the fact that she received notice and actually owed the money. The lower Court properly granted Respondent's motion for an involuntary non-suit. There is no legal justification for the return of the Appellant's security deposit. The lease does not provide for certified mail notice under these circumstances. Further,

under the Residential Landlord Tenant Act, the notice requirement is met if notice is actually received. Here, notice was clearly received by the Appellant's own admission.

CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the Order of the Circuit Court and Trial Court be affirmed.

Respectfully submitted,



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January 13, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2019-001533

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SC Court of Appeals

Morgan Conley.....Plaintiff/Appellant,

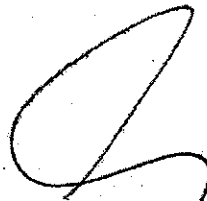
vs.

April Morganson.....Defendant/Respondent.

CERTIFICATE OF COMPLIANCE

I, S. Jahue Moore, Jr., as counsel for Respondent, hereby certified that the Final Brief of Respondent complies with Rule 211 (b), of the South Carolina Appellate Court Rules.

Respectfully submitted,



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Attorney for Respondent

January 13, 2020

APPENDIX 42

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

OFFICE OF THE CLERK OF COURT
COURT OF COMMON PLEAS

John Newman, Circuit Court Judge

Case Action No. 2016-CP-000039
Appellate Case No. 1619-001513

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SC COURT OF APPEALS

Respectfully,

THE CLERK OF COURT

John Newman, Circuit Court Judge
Circuit Court of South Carolina
Columbia, South Carolina
John Newman, Circuit Court Judge
Circuit Court of South Carolina
Columbia, South Carolina

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ARGUMENT IN REPLY

Introduction

This Court should not be misled by the Respondent/Landlord's tactic, throughout her Brief, of disguising the fact that the **Respondent/Landlord only sent electronic mail** to the Appellant/Tenant. The **Respondent/Landlord failed** to send the required Notice to the Appellant/Tenant by delivery in hand, or by mailing the Notice to the Appellant/Tenant, by Registered or Certified Mail. See, S.C. Code Ann., Section 27-40-240(B)(3)¹, (1976, as amended). It is uncontroverted that the **Respondent/Landlord failed** to hand-deliver the Notice and the **Respondent/Landlord failed** to mail the Notice to the Appellant/Tenant by Registered or Certified Mail. Despite Respondent/Landlord's failure to comply with South Carolina Law, Respondent/Landlord's Brief is replete with misleading references, as follows.

- On page "4" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**written digital communication**...."
- On page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**a written communication**...."
- Also, on page "5" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**the actual written communication**...."
- On page "6" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "**The written communication**...."
- On page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**written notification**...."
- Also, on page "7" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**the written communication**...."
- On page "8" of Respondent/Landlord's Brief, the Respondent/Landlord describes her **noncompliant electronic mail** as, "...**a written communication**...."

Emphasis supplied in all of the above-referenced quotes.

¹ In pertinent part, Section 27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant...."

I. THE LOWER COURT ERRED WHEN THE LOWER COURT JUDGE STATED IN OPEN COURT THAT HE WAS GOING TO SIMPLIFY, CLARIFY, MODERNIZE AND REVISE THE LAWS CONCERNING LANDLORDS AND TENANTS.

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

II. THE LOWER COURT ERRED WHEN THE LOWER COURT SUBSTITUTED HIS INTERPRETATION OF AN UNAMBIGUOUS STATUTE, FOR THE PLAIN AND ORDINARY MEANING OF THE STATUTE FROM THE SOUTH CAROLINA GENERAL ASSEMBLY, NAMELY, THAT NOTICE MUST BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL TO THE TENANT, AS REQUIRED BY S.C. CODE ANN. § 27-40-240(B)(3).

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

III. THE LOWER COURT ERRED WHEN THE LOWER COURT INDICATED THAT TENANTS RELYING ON THE PLAIN AND ORDINARY MEANING OF S.C. CODE ANN. § 27-40-240(B)(3), WERE USING THE STATUTE TO CATCH, "...UNSUSPECTING LANDLORDS...", FOR NONCOMPLIANCE WITH THE STATUTE AND TO "...PIN ON THE LANDLORD..." THE REQUIREMENTS OF THE STATUTE THAT NOTICE BE DELIVERED IN HAND TO THE TENANT, OR MAILED BY REGISTERED OR CERTIFIED MAIL.

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

IV. THE LOWER COURT ERRED WHEN THE LOWER COURT STATED THAT BECAUSE THE RESIDENTIAL LANDLORD TENANT ACT WAS ENACTED IN 1986 (*sic*), THE VERBATIM REQUIREMENT IN S.C. CODE ANN. § 27-40-240(B)(3), FOR "NOTICE" COULD BE SUPERSEDED BY THE LOWER COURT'S FINDING THAT, "E-MAIL" NOTICE COULD BE SUBSTITUTED FOR THE STATUTE'S CLEAR REQUIREMENT FOR NOTICE TO BE DELIVERED IN HAND TO THE TENANT OR, MAILED BY REGISTERED OR CERTIFIED MAIL.

The Respondent failed to respond to the above issue in her Brief. Accordingly, this Court may treat Respondent's failure to respond as a confession that the Appellant's position is correct. See First Union Nat'l Bank v. FCVS Communications, 321 S.C. 496, 502, 469 S.E.2d 613, 617 (Ct. App. 1996) (if respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct), reversed on other grounds, 328 S.C. 290, 494 S.E.2d 429 (1997).

V. **THE LOWER COURT WAS NOT CORRECT IN GRANTING RESPONDENT'S MOTION FOR INVOLUNTARY NON-SUIT.**

(Respondent/Landlord did not address Appellant/Tenant's issues on appeal, but provided the converse of the issue set forth above)

S.C. Code Ann., Section 27-40-240(B).

Respondent/Landlord attempts to justify her blatant failure to comply with South Carolina Law by pointing to S.C. Code Ann., Section 27-40-240(b)(sic). Respondent/Landlord's attempt to rely on S.C. Code Ann., Section 27-40-240(B)² fails because the Respondent/Landlord ignores provision (3) of that Code Section, which specifically pertains to "Tenants", and **which requires Notice to a Tenant be delivered in hand to the Tenant or mailed to the Tenant by Registered or Certified mail.** S.C. Code Section 27-40-240(B)(3), (1976, as amended). The specific provision of S.C. Code Section 27-40-240(B)(3), controls over the general provision. "When reviewing a statute, this Court must follow specific provisions over general language in the statute. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 648 (S.C. App., 2008).

It is uncontroverted that the Respondent/Landlord did not provide Notice to the Tenant by hand-delivery or to the Tenant by Registered or Certified Mail. Furthermore, the Respondent/Landlord's use of email, for a Notice to the Appellant/Tenant, means that the Respondent/Landlord did not comply with S.C. Code Ann., Section 27-40-240(B)(3), because email cannot be sent by Registered or Certified mail, as required by the Statute.

² In pertinent part, Section 27-40-240. Notice. (B)(3), "in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant...."

Respondent/Landlord's Reliance on §27-40-310.

Respondent/Landlord provides a citation to S.C. Code Ann. Section 24-40-310, (apparently mis-referencing S.C. Code Section 27-40-310), stating that that Section permits a Landlord and Tenant to negotiate and create their own terms and conditions in a Lease. Respondent/Landlord further argues the language of the parties' lease agreement controls (page "7" of Respondent/Landlord's Brief).

Once again Respondent/Landlord highlights a part of a Code Section while ignoring S.C. Code Ann., Section 27-40-310(a) and Section 27-40-330. S.C. Code Ann. Section 27-40-310(a) reads as follows, "A landlord and a tenant may include in a rental agreement terms and conditions **not prohibited** by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties." (Emphasis supplied). S.C. Code Ann., Section 27-40-330(a)(1) reads as follows, "A rental agreement **may not provide** that the tenant: (1) agrees to waive or forego rights or remedies under this chapter" (Emphasis supplied).

Respondent/Landlord Describes Act Requirements as, an "Absurdity".

Respondent/Landlord describes the clear requirement of S.C. Code Ann., Section 27-40-240(B)(3), requiring Notice to a Tenant be made by hand-delivery or mailed to the Tenant by Registered or Certified mail, as an "absurdity", (page "8" of Respondent/Landlord's Brief):

Respondent/Landlord Falsely States that an Accounting was Provided.

On page "7" of Respondent/Landlord's Brief, she claims Notice and an Accounting was provided to Appellant/Tenant. The citation to the Record provided by the Respondent/Landlord, (Transcript of Record, Page 36 Line 1), **does not support** Respondent/Landlord's false claim.

Because a Directed Verdict was given by the Court at the conclusion of the Appellant/Tenant's case, the Appellant/Tenant's testimony on this subject is the only testimony given and it shows that Respondent/Landlord falsely claimed that an Accounting was provided.

"Q. Did you [Appellant/Tenant] ever receive a rent -- a written accounting from the landlord showing you how the prepaid rent or --security deposit and the prepaid rent was used?

A. No I did not.

Q. And have you received one up until this day?

A. No, I have not." (R. p. 18 lines 6-11).

Respondent Falsely States Appellant Admits Receiving Written Communication.

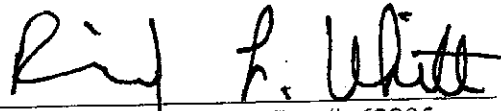
On page "8" of Respondent/Landlord's Brief, she states, "There is absolutely no doubt that Appellant received a written communication...." and furthermore the Respondent/Landlord falsely states that the Appellant/Tenant acknowledged receiving a written communication.

First of all, the Record citation provided by the Respondent/Landlord on page "8" of Respondent/Landlord's Brief, **does not support** an allegation that the Appellant/Tenant received a written communication. Secondly, the citation provided by the Respondent/Landlord leads to testimony whereby Appellant/Tenant admits to receiving, "...**an email**...." (Emphasis supplied), (R. p. 27 line 25).

CONCLUSION

Based on the foregoing, this Court should reverse the Trial Court's Directed Verdict and remand this case to the Trial Court for Trial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard L. Whitt", written over a horizontal line.

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Attorneys for Appellant.

January 9, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139

Appellate Case No. 2019-001533

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SC Court of Appeals

Morgan Conley.....Appellant,

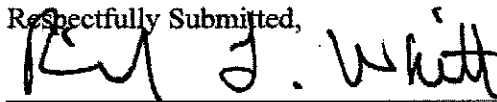
v.

April Morganson.....Respondent.

CERTIFICATE OF COMPLIANCE

I, Richard L. Whitt, as counsel for Appellant, hereby certify that the Final Brief of Appellant and the Final Reply Brief of Appellant complies with Rule 211(b), of the South Carolina Appellate Court Rules.

Respectfully Submitted,



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Attorneys for Appellant.

January 9, 2020

APPENDIX 55

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04130
Appellate Case No. 2019-001533

RECEIVED

DEC 20 2019

SC Court of Appeals

Morgan Conley.....Appellant,

v.

April Morganson.....Respondent.

RECORD ON APPEAL

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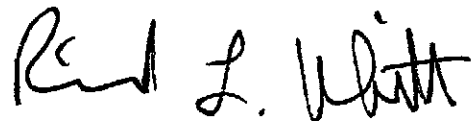
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Respectfully submitted this 20th day of December, 2019.



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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Morgan Conley,

Plaintiff,

vs.

April Morganson,

Defendant.

C.A. 2016-CP-40-04139

ORDER

This matter was before the Court as a non-jury trial. Present at the hearing was the Plaintiff with her attorney, Richard Whitt. Also present was the Defendant with her attorney, S. Jahue Moore, Jr.

Pre-trial motions were made in this case. The Defendant moved to dismiss the case based upon Judge Manning's Order of June 12, 2017. The Defendant argued that Judge Manning's Order was dispositive of the case. The Defendant's Motion was respectfully denied and the trial commenced.

The testimony in this trial consisted of the Plaintiff. The Plaintiff on direct examination, clearly established a lease agreement with the Defendant. The Plaintiff further testified that after signing the year-long lease agreement with the Defendant, she communicated with the Defendant that she would not be able to make her rent payments and that she desired to rescind the lease. The Plaintiff further testified that she provided the Defendant her first month's rent payment of \$1,200.00, along with a security deposit for an additional \$1,200.00.

Documentation was entered into evidence which clearly indicated extensive communication between the parties by email. It is clear from the communications that the

Plaintiff attempted to rescind the lease. It is clear the Defendant refused to rescind the lease and insisted upon strict compliance with the lease. It is further clear the Defendant made a reasonable effort to mitigate her damages in that she immediately relisted the property in question for lease. Within approximately 45 days, the Defendant was able to find another tenant for her building.

There is absolutely no doubt the Plaintiff breached the Lease Agreement between the parties. There is absolutely no doubt the Plaintiff owed the Defendant for approximately three months of rent. It is clear the Plaintiff only paid the Defendant for one month of rent.

It is clear from the Lease Agreement between the parties that in such circumstances, the security deposit may be used to satisfy the tenant's rent obligation. Here, the Defendant applied the security deposit toward the Plaintiff's monthly rent payment. The Defendant documented same through the various email communications between the parties. The Defendant provided the Plaintiff with a full accounting of the application of the security deposition toward the Plaintiff's rent obligation.

The written lease between the parties does not provide for certified mail communications between the parties. The lease simply requires the parties to communicate about certain things. Here, it is abundantly clear that the parties communicated by email over every aspect of the lease and the Plaintiff's breach of the lease.

The Plaintiff asserts that the South Carolina Landlord/Tenant Act requires certain notifications to be sent by Certified Mail. South Carolina Code §27-40-240(b)(1) provides that a person receives a notice or notification when it comes to his attention or (2) in the case of the landlord is delivered at the place of the business of the landlord through which the rental agreement was made or at any place held out by the tenant as the place for receipt of the communications; or (3) in the case of the tenant, it is delivered in the hand, to the tenant or

mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the presence of the designation to the tenant's last known place of residence. The South Carolina Landlord/Tenant Act certainly requires certified mail notification in certain instances but, as set forth above, and as is the case in this situation, the Plaintiff clearly received email notification of all aspects concerning the parties' lease.

The Plaintiff simply argues that although she breached a lease and failed to abide by its terms, her security deposit and rent payment should be returned because the Defendant did not provide her a certified letter informing her of the Defendant's intentions.

The testimony presented by the Plaintiff clearly establishes that the Defendant has abided by all the terms of the parties' lease. The testimony further shows that the Defendant fully complied with the South Carolina Residential Landlord/Tenant Act. The testimony further reveals that the Plaintiff has failed to meet her burden of proof at today's hearing. As such, the Defendant, upon the close of the Plaintiff's case, made a motion pursuant to Rule 41 for an involuntary non-suit. The Defendant's motion is hereby granted and this matter is dismissed.

Upon the dismissal of the Plaintiff's case, the Defendant elected not to proceed with her counterclaim and formally abandoned the counterclaim. As such, the matter concluded.

The above is hereby made an Order of this Court. The Plaintiff's case is dismissed with prejudice. The Defendant's counterclaim is dismissed with prejudice by motion of the Defendant, herself.

IT IS SO ORDERED.

Clifton Newman
Presiding Judge

_____, South Carolina

_____, 2019



Richland Common Pleas

Case Caption: Morgan Conley vs April Morganson
Case Number: 2016CP4004139
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2019-08-16 13:41:51 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-04139

Morgan Conley,

Plaintiff,

v.

April Morganson,

Defendant.

**COMPLAINT
(First Amended)**

(By Consent, Pursuant to Rule 15
SCRCP)

FILED
MAY 24 AM 10:31
CLERK OF COURT
JANETTE W. MORRIS
C.O.B. & C.S.

Now Comes the Plaintiff, Morgan Conley, (hereinafter, "Ms. Conley"), complaining of the Defendant, April Morganson, (hereinafter as, "Morganson"), and amending her Complaint, with consent from counsel for Defendant, as follows.

PARTIES AND JURISDICTION

1. Plaintiff, Ms. Conley is a citizen and resident of Richland County, South Carolina.
2. Upon information and belief, Defendant April Morganson is a citizen and resident of Charleston County, South Carolina
3. The rental property, which is the subject matter of this litigation, is located in Richland County, South Carolina.
4. Therefore, venue and jurisdiction are proper in the Richland County Court of Common Pleas, for the Fifth Judicial Circuit.

COURSE AND PATTERN OF DEALINGS

5. Paragraphs one through four are re-alleged here as if set forth verbatim.
6. Plaintiff and Defendant entered into a rental agreement, in May, 2016.
7. Plaintiff Ms. Conley deposited \$1,200.00, with the Defendant, as a security deposit, and \$960 for prepaid rent for an apartment owned/managed by the Defendant, denominated as unit "500", located on Hampton Forest Drive in Columbia, Richland County, South Carolina, (hereinafter as, "Rental Premises").

8. Defendant Morganson failed to deliver the Rental Premises to Plaintiff and Defendant Morganson unlawfully withheld Plaintiff Ms. Conley's security deposit of \$1,200.00, in contravention of Section 27-40-410(a) of the Residential Landlord and Tenant Act, (hereinafter as the, "Act").

9. Defendant Morganson failed to deliver the Rental Premises to Plaintiff and Defendant Morganson unlawfully withheld Plaintiff Ms. Conley's prepaid rental amounts for the month of May, 2016 in the amount of \$960.00, in contravention of Section 27-40-410(b), of the Act.

10. Defendant's retention of Plaintiff Ms. Conley's security deposit and prepaid rent was unlawful.

11. Plaintiff Ms. Conley and Plaintiff's counsel demanded in writing, the return of Plaintiff Ms. Conley's security deposit and prepaid rent, but Defendant refused and continues to refuse, to return the same. Defendant has admitted her retention of Plaintiff's security deposit and Plaintiff's prepaid rent.

FOR A FIRST CAUSE OF ACTION AGAINST
DEFENDANT APRIL MORGANSON

(Breach of Contract)

12. Paragraphs one through eleven are re-alleged here as if set forth verbatim.

13. A contract was formed between the Plaintiff and the Defendant.

14. Plaintiff fully performed under the Contract

15. Defendant breached the Contract by, *inter alia*, failing to deliver possession of the Rental Premises to the Plaintiff.

16. Plaintiff did not excuse the nonperformance of the Defendant.

17. Plaintiff was damaged in the amount of \$2,160.00, plus the costs of filing this action of \$150.00, plus the cost of serving the Defendant \$60.00, for total damages of **\$2,370.00**.

FOR A SECOND CAUSE OF ACTION AGAINST
DEFENDANT APRIL MORGANSON

(Violation of the South Carolina Residential Landlord and Tenant Act)
Section 27-40-240, S.C. Code Ann., (1976, as amended)
(Count One)

18. Paragraphs one through seventeen are re-alleged here as if set forth verbatim.
19. The acts alleged hereinabove are in violation of the Act.
20. Defendant Morganson, *inter alia*, violated Section 27-40-240 of the Act, as to the Notice provisions of the Act.
21. Plaintiff Ms. Conley was damaged by (i) Defendant's failure to provide the Statutory Notice and reconciliation as required by the Act and (ii) the unlawful retention of Plaintiff Ms. Conley's security deposit and prepaid rent described hereinabove.
22. Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00 or \$6,480.00, plus court costs of \$150.00, plus the cost of serving the Defendant of \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of \$6,940.00.

FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANT APRIL MORGANSON

(Violation of the South Carolina Residential Landlord and Tenant Act)
Section 27-40-410, S.C. Code Ann., (1976, as amended)
(Count Two)

23. Paragraphs one through twenty-two are re-alleged here as if set forth verbatim.
24. The acts alleged hereinabove are in violation of the Act.
25. Defendant, *inter alia*, violated Section 27-40-410(a) of the Act, as to the return of Plaintiff's security deposit.
26. Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00, or \$6,480.00, plus court costs of \$150.00, plus the cost of serving the Defendant of \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of \$6,940.00.

FOR A FOURTH CAUSE OF ACTION AGAINST
DEFENDANT APRIL MORGANSON

(Violation of the South Carolina Residential Landlord and Tenant Act)
Section 27-40-410, S.C. Code Ann., (1976, as amended)
(Count Three)

27. Paragraphs one through twenty-six are re-alleged here as if set forth verbatim.
28. The acts alleged hereinabove are in violation of the Act,
29. Defendant Morganson, *inter alia*, violated Section 27-40-410(b) of the Act, as to the return of Plaintiff's prepaid rent.
30. Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00, or \$6,480.00, plus court costs of \$150.00, plus the cost of serving the Defendant of \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of \$6,940.00.

FOR A FIFTH CAUSE OF ACTION AGAINST
DEFENDANT APRIL MORGANSON

(Violation of the South Carolina Residential Landlord and Tenant Act)
Sections 27-40-430 and 27-40-620, S.C. Code Ann., (1976, as amended)
(Count Four)

31. Paragraphs one through thirty are re-alleged here as if set forth verbatim.
32. The acts alleged hereinabove are in violation of the Act, as to delivery of the Rental Premises.
33. Defendant Morganson, *inter alia*, violated Section 27-40-430 and Section 27-40-620 of the Act, as to the failure to deliver the premises.
34. Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00 or \$6,480.00, plus court costs of \$150.00, plus the cost of serving the Defendant of \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of \$6,940.00.

**FOR A SIXTH CAUSE OF ACTION AGAINST
DEFENDANT APRIL MORGANSON**

(Violation of the South Carolina Residential Landlord and Tenant Act)
Sections 27-40-330(b) S.C. Code Ann., (1976, as amended)
(Count Five)

35. Paragraphs one through thirty-four are re-alleged here as if set forth verbatim.
36. The acts alleged herein, are in violation of the stated provision of the Act. Defendant Morganson, in open Court before the Honorable L. Casey Manning, maliciously used the Rental Agreement herein, containing provisions known by Defendant Morganson to be prohibited and attempted to unlawfully exercise the rights claimed to be created thereby.
37. Defendant Morganson, *inter alia*, violated Section 27-40-330(b) of the Act, as to the.
38. Plaintiff Ms. Conley is entitled to recover actual damages and an amount equal to three months' rent and a reasonable attorney fee.

PUNITIVE DAMAGES

39. Paragraphs one through thirty-eight are re-alleged here as if set forth verbatim.
40. Because Defendant Morganson actions were reckless, willful and wanton and because there were multiple violations of a Statute, described hereinabove, by Defendant Morganson, the door is opened for the Jury to consider Punitive Damages against Defendant Morganson.
41. The violations described hereinabove, support a Punitive Damage award against Defendant Morganson.
42. Violation of a Statute does not constitute recklessness, willfulness, and wantonness, *per se*, but is evidence Defendant acted recklessly, willfully, and wantonly. However, even in cases involving disputed liability, Punitive Damages are sustainable if there is any evidence supporting a violation of a Statute. Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 SE 2d 867 (S.C. Ct. of App. 2004).

43. Therefore, pursuant to, Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 SE 2d 867 (S.C. Ct. of App. 2004), a factual question as to Punitive Damages is presented to a Jury, when, as in the instant case, there is evidence of a Statutory violation(s) by the Defendant i.e., the Statutory violations by the Defendant, as described above.

44. Plaintiff Ms. Conley is entitled to recover damages, including Punitive Damages, because of Defendant Morganson's violations of the Statutes described hereinabove, and Defendant Morganson's reckless, willful, and wanton conduct.

WHEREFORE, Plaintiff Ms. Conley is entitled to damages and a Judgment as follows:

FOR A FIRST CAUSE OF ACTION against Defendant April Morganson, Plaintiff Ms. Conley is entitled to recover \$2,160.00, plus the costs of filing this action of \$150.00, plus the cost of serving the Defendant of \$60.00, for total damages of **\$2,370.00**.

FOR A SECOND CAUSE OF ACTION against Defendant April Morganson, Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00 or **\$6,480.00**, plus court costs of \$150.00, plus the cost of serving the Defendant of \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of **\$6,940.00**.

FOR A THIRD CAUSE OF ACTION against Defendant April Morganson, Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00 or **\$6,480.00**, plus court costs of \$150.00, plus the cost of serving the Defendant of \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of **\$6,940.00**.

FOR A FOURTH CAUSE OF ACTION against Defendant April Morganson, Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00 or **\$6,480.00**, plus court costs of \$150.00, plus the cost of serving the Defendant \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of **\$6,940.00**.

FOR A FIFTH CAUSE OF ACTION against Defendant April Morganson, Plaintiff Ms. Conley is entitled to recover damages equal to three times the amount unlawfully held by Defendant of \$2,160.00 or **\$6,480.00**, plus court costs of \$150.00, plus the cost of serving the Defendant of \$60.00, and a reasonable attorney fee of \$250.00, totaling damages of **\$6,940.00**.

FOR A SIXTH CAUSE OF ACTION against Defendant April Morganson, Plaintiff Ms. Conley is entitled to recover actual damages and an amount equal to three months' rent and a reasonable attorney fee.

Complaint (First Amended)
May 23, 2017
Page 7 of 7

FOR AN AWARD OF PUNITIVE DAMAGES against Defendant April Morganson, Plaintiff Ms. Conley is entitled to recover damages, including Punitive Damages, because of Defendant Morganson's violation(s) of Statutes described hereinabove, and Defendant Morganson's reckless, willful, and wanton conduct.

AND FOR SUCH OTHER RELIEF AS THIS COURT DEEMS JUST AND PROPER.

AUSTIN & ROGERS, PA.


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Jefferson D. Griffith, III,
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Columbia, South Carolina 29201
(803) 256-7442
(803) 252-3679 (f)
Attorneys for Plaintiff.

May 23, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Morgan Conley,

C.A. 2016-CP-40-04139

Plaintiff,

vs.

**ANSWER AND COUNTERCLAIM TO
FIRST AMENDED COMPLAINT**

April Morganson,

Defendant.

The Defendant answers the Plaintiff's First Amended Complaint and counterclaims as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation made in the Plaintiff's First Amended Complaint.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

2. The Defendant reasserts and realleges each and every defense as fully as if set forth herein verbatim.

3. The parties entered into a contract on April 21, 2016. The contract was for the lease of a home owned by the Defendant.

4. The terms of the lease were reduced to writing and required the Plaintiff to pay rent in exchange for living in the Plaintiff's residence.

5. After the signing of the lease agreement, the Plaintiff informed the Defendant that she had concerns about her finances and wished to void the lease agreement. The Plaintiff apologized to the Defendant for engaging in the anticipatory breach and on May 10, 2016 took it upon herself, without the Defendant's permission, to list the leased premises as available for rent.

RICHLAND COUNTY
FILED
2017 JUN 16 PM 4:22
JEANETTE W. MCBRIDE
C.P. & G.S.

6. The Defendant was unwilling to void the lease agreement but did list the property as being available for rent. Despite having fully acknowledges to the Defendant that the reason for her anticipatory breach was because of finances, the Plaintiff communicated to the Defendant on May 15, 2016 that she believes the lease to be void as a result of the premises not being available to her on May 7, 2016. In fact, the premises was available for the Plaintiff on May 7, 2016 but the parties agreed that the Plaintiff would move in several days later and that the Defendant would simply pro rate the rent for the month of May.

7. Despite the written lease agreement, the Plaintiff never moved into the leased premises and breached the lease agreement.

8. The parties entered into a binding contract.

9. Valid consideration existed in the making of the contract.

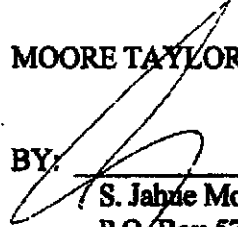
10. The Plaintiff willfully breached the contract in advance of even moving into the leased premises.

11. As a direct and proximate result of the above the Plaintiff breach of contract, the Defendant has been damaged in that she has been forced to relist the premises for rent, she has lost rental income, she has been forced to hire an attorney, and she has been damaged in other ways.

12. As a direct and proximate result of the Plaintiff's breach of contract, the Defendant is informed and believes she is entitled to a judgment against the Plaintiff for actual and punitive damages.

WHEREFORE, having fully answered the Plaintiff's First Amended Complaint, the Defendant prays for the matters alleged above as well as such other and further relief as this Court might deem just and proper.

MOORE TAYLOR LAW FIRM, P.A.

BY: 

S. Jahze Moore, Jr.

P.O. Box 5709

West Columbia, SC 29171

(803) 796-9160

Attorney for the Defendant

West Columbia, South Carolina
June 16, 2017

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State of South Carolina
County of Richland

Court of Common Pleas

Morgan Conley,
Plaintiff,
vs.
April Morganson,
Defendant.

Transcript of Record
2016-CP-40-04139

September 28, 2018
Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

A P P E A R A N C E S:

Jefferson D. Griffith, III, Esquire
Richard L. Whitt, Esquire
On behalf of the Plaintiff

S. Jahue Moore, Jr., Esquire
On behalf of the Defendant

Stacy S. Johnson, RPR
Circuit Court Reporter

1 **MR. GRIFFITH:** Yes, sir.

2 We call Morgan Conley to the stand.

3 **THE CLERK:** Would you state your full name, please.

4 **THE WITNESS:** Morgan Conley.

5 (Whereupon, Morgan Conley was duly sworn by the
6 Clerk of Court.)

7 **THE CLERK:** Thank you. Have a seat right over there.

8 MORGAN CONLEY,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GRIFFITH:

12 Q. Ms. Conley, for the record what is your full name,
13 please?

14 A. Morgan Conley.

15 Q. Ms. Conley, where do you reside?

16 A. I live in Columbia, South Carolina.

17 Q. Ms. Conley, did you in 2016 find a townhouse to rent?

18 A. Yes, I did.

19 Q. And did you enter into negotiations to rent that town
20 house?

21 A. Yes, I did.

22 Q. Okay. Did you enter into those negotiations with an
23 individual named April Morganson?

24 A. Yes, I did.

25 Q. Did you have any preliminary negotiations with

1 Ms. Morganson about the rental of the townhouse?

2 A. Could you repeat the question?

3 Q. Did you have any preliminary negotiations with
4 Ms. Morganson about the rental of the townhouse?

5 A. Yes, I did.

6 Q. Did you eventually sign a written lease for the
7 rental of the townhouse?

8 A. Yes.

9 Q. Did you have any on-going negotiations with
10 Ms. Morganson after you entered into the lease of the
11 townhouse?

12 A. Yes.

13 Q. Did you pay for prepaid rent in an amount of \$920?

14 A. Yes.

15 Q. And did you pay a security deposit of \$1,200?

16 A. Yes.

17 Q. And those monies went to Ms. Morganson?

18 A. Yes, they did.

19 Q. Did you ever occupy the rental townhouse?

20 A. No, I never stayed one day or one night.

21 Q. Did you request a return of your prepaid rent and
22 security deposit from Ms. Morganson?

23 A. Yes, I did.

24 Q. Did you request that your lawyers request a return
25 of your prepaid rent and security deposit from

1 Ms. Morganson?

2 A. Yes, I did.

3 Q. Did you ever receive either prepaid rent or security
4 deposit from Ms. Morganson?

5 A. No.

6 Q. Did you ever receive a rent -- a written accounting
7 from the landlord showing you how the prepaid rent or --
8 security deposit and the prepaid rent was used?

9 A. No, I did not.

10 Q. And have you received one up until this day?

11 A. No, I have not.

12 **MR. GRIFFITH:** That's all the questions we have for
13 this witness, Your Honor.

14 **THE COURT:** All right. Mr. Moore.

15 **CROSS-EXAMINATION**

16 **BY MR. MOORE:**

17 Q. Ma'am, let me ask you this. You just testified that
18 you signed a written lease agreement with my client?

19 A. Yes.

20 Q. Okay. When did you do that?

21 A. It was May of 2016.

22 Q. Okay. Did anybody pressure you or force you to sign
23 it?

24 A. No, I was not pressured.

25 Q. All right. Did you read it?

1 A. Yes, I did read the contract.

2 Q. Did you understand it?

3 A. Yes, I do understand it.

4 Q. All right. Now when you signed it and you read it
5 and you understood it, what was your understanding with
6 regard to your obligation to pay rent?

7 A. I understand that I needed to make a monthly payment
8 in regards to rent.

9 Q. Right. Each month that goes by you pay to live in
10 April's house, right?

11 A. I never lived at that -- at the townhouse.

12 Q. Ma'am, I understand that you never lived there.
13 That's not what I'm asking. Pursuant to the actual signed
14 document that you signed and understood, your obligation
15 was to pay rent for a year, right?

16 A. Yes.

17 Q. Okay. And you were gonna pay monthly for a year to
18 live in Ms. April's home, right?

19 A. I agreed to a contract, yes.

20 Q. Okay. So we know there was a contract, right?

21 A. Yes.

22 Q. Okay. Who was the person to breach the contract?

23 A. In my knowledge, it was April that breached.

24 Q. I see. Now let me ask you this. After you signed
25 the agreement, did you send Ms. April an e-mail or a text

1 Q. And part of your obligation is to pay rent for an
2 entire year, right?

3 A. Under these terms, the agreement was a 12-year {sic}
4 term.

5 Q. And you didn't do that, did you?

6 A. No, I never moved into the property.

7 Q. All right. But that wasn't my question. I did not
8 ask you a single thing about moving into the property,
9 ma'am. What I asked you very clearly was you did not pay
10 rent for a year, did you?

11 A. I paid rent for the first month.

12 Q. Right. That's what you were supposed to do, wasn't
13 it?

14 A. In the terms of the lease, yes.

15 Q. Right. Okay. So you complied with the lease and
16 paid the first month's rent, right?

17 A. I paid \$920 in prepaid rent.

18 Q. Okay. And there was a -- let me ask you this, okay?
19 Prepaid rent. You paid rent before you moved in, right?

20 A. I paid a sum of \$920 as prepaid rent for the month
21 of May.

22 Q. Okay. And that's what you were supposed to do under
23 the terms of the agreement, right?

24 A. In my mind, that's what I needed to do as in any
25 other agreement.

1 just in your mind this thing, this agreement, is just
2 invalid; is that what you're honestly telling this Court?

3 A. We entered an agreement for housing. I never moved
4 into it.

5 Q. Whose decision was that?

6 A. It was my decision not to move in.

7 Q. I see. So April had nothing to do -- April's
8 obligation under the terms of this lease was not to come
9 and get you and take your property and move it into her
10 house, was it?

11 A. No.

12 Q. Okay. Now when you asked her if she would mind
13 tearing up this lease, breaching -- and breaking it, she
14 said no, but she didn't say go to blazes, I'm not gonna
15 help you, did she? She actually tried to help you, didn't
16 she?

17 A. She did put the property on -- up for lease again,
18 yes.

19 Q. That was a nice thing for her to do, wasn't it,
20 because it means that if she were to get it re-leased,
21 that would mean that your obligation to pay rent would
22 then terminate, right?

23 A. If she found another tenant to move into the place,
24 yes.

25 Q. And that benefits you because you didn't want to

1 Q. All right. And she was successful in getting
2 somebody else in there, right?

3 A. I wasn't there when she signed another lease.

4 Q. Well, she certainly hadn't asked you for any more
5 rent, has she?

6 A. I have no communication asking for additional rent,
7 no.

8 Q. Okay. Now your prepaid rent that you say you want
9 back, we know that under the terms of the lease agreement
10 you're on the hook for three months of rent, right?

11 A. Yes; May, June, July.

12 Q. Okay. And we know that you only paid for one -- you
13 only made one rental payment, right?

14 A. I paid \$920 in prepaid rent.

15 Q. Got you. So one rental payment for three months.
16 That's not all you owe, is it?

17 A. So the e-mail communication that I was sent stated
18 that the new tenant was supposed to start May 8th --
19 July 8th.

20 Q. Right. I understand, but I didn't ask you about
21 the new tenant. I asked you very simply if you paid for
22 one month of rent that you keep calling prepaid rent, but
23 you owe two more, that means that you haven't met your
24 rent obligation under the terms of the lease, have you?

25 A. I have not made any additional payments.

1 Q. Okay. So you're -- what you understood to be right
2 was to pay one month's rent, ask April to tear up the
3 lease and when she doesn't you just stop paying rent?
4 That's what you're supposed to do?

5 A. In terms of the agreement, no.

6 Q. All right. I'm not sure I understand that, but let's
7 move on to something else. The security deposit, okay?
8 You paid a security deposit, didn't you?

9 A. I made a payment of \$1,200 towards a security deposit,
10 yes.

11 Q. And rent is actually \$1,200 a month, isn't it?

12 A. Yes, the agreement was \$1,200 per month.

13 Q. The reason why the prepaid rent is a little bit less
14 is because April did you a favor and basically prorated
15 the rent a little bit so you could move in later, right?

16 A. No.

17 Q. Okay. You certainly didn't pay \$1,200, did you, for
18 the first prepaid rent?

19 A. The reason why it started May 7th is Ms. -- the
20 Defendant still lived in the property.

21 Q. Okay. Let me ask you this. The 1,200 dollar
22 security deposit -- okay. Now do you remember what's in
23 Paragraph 22 of the actual lease agreement?

24 A. I would need to see that document.

25 **MR. MOORE:** Your Honor, I have the lease agreement

1 Q. Okay. Now let's talk about that for a minute.

2 Clearly under this lease agreement it says that the
3 security deposit may be used to cover rent if you failed
4 to pay rent, right?

5 A. My understanding is that, yes.

6 Q. Okay. And we all know now that you failed to pay
7 rent, right?

8 A. I did not make any additional payments other than
9 the prepaid rent.

10 Q. Okay. So under the actual lease agreement itself,
11 April is perfectly justified in taking your security
12 deposit and putting it toward your failure to pay rent,
13 right?

14 A. I did not get communication as to where the money
15 was going to be applied.

16 Q. Okay. So let me get this straight. All right.
17 We'll get to that in a minute, I suppose, but I just
18 want to make sure I've got this straight. You didn't pay
19 rent like you were supposed to under the agreement, you
20 acknowledge there was an agreement, you acknowledge that
21 the security deposit can be used for your failure to pay
22 rent, and your legal justification and basis for this
23 lawsuit is you didn't get a letter saying where the money
24 was gonna go?

25 **MR. GRIFFITH:** Objection, Your Honor. I think that

1 it does call for a legal conclusion. He's asked her her
2 legal basis for bringing this lawsuit. He can ask about
3 the factual basis for bringing it, but I don't think he
4 can ask her for a legal conclusion.

5 **THE COURT:** Well, it's practically one and the same
6 in relation to the question. I overrule the objection.

7 **MR. MOORE:** Thank you.

8 BY MR. MOORE:

9 Q. Ma'am, your basis for this lawsuit -- entire basis
10 for this lawsuit is, yeah, I acknowledge I didn't do what
11 I was supposed to do under the lease, but she didn't send
12 me a letter saying how the money was supposed to be used,
13 so I'm entitled to get my money back plus treble damages?

14 A. I was not given written notice as to how the funds
15 were going to be applied.

16 Q. Let me ask you this. We'll go back to Defendant's
17 Exhibit Number 1. Let me draw your attention here to an
18 e-mail, May the 17th, did you get that e-mail from April?

19 A. May 17th from April to Morgan. Yes, I received this.

20 Q. Wonderful. It says here I will not be returning any
21 portion of the security deposit or May rent since this is
22 still part of the contractual rental agreement. Since
23 you've decided not to uphold your end of the contract,
24 you will be forfeiting any return on your security deposit
25 due to the extra costs to re-list the property. Also

1 since you took upon yourself to turn off the electricity
2 to the property without -- whatever.

3 Ma'am, she told you that she wasn't gonna give the
4 security deposit back since you haven't paid the rent,
5 all right? What more in a written communication would you
6 have her do other than tell you exactly why the security
7 deposit is not coming back and why it's being kept? You
8 testified she gave you no written communication, didn't
9 you?

10 A. Written communication via mail.

11 Q. Ah. The e-mail is not -- the words in the e-mail --
12 the written -- the written words that you actually saw on
13 a computer screen, your theory of the case factually is
14 that if it were on a piece of paper and you had seen it,
15 then somehow, some way this lawsuit would have never been
16 brought?

17 A. To my knowledge, in business when you make a payment
18 you are to be given a receipt of transaction. That -- I
19 never got a receipt of transaction.

20 Q. A receipt of transaction. What exactly do you mean
21 by that?

22 A. I never received an invoice or receipt of movement
23 of money.

24 Q. Ma'am, she sent you an e-mail that said we're not
25 giving your security deposit back because you haven't

1 paid rent. What more do you want?

2 A. I expected to get a certified piece of mail with an
3 invoice of transaction.

4 Q. Okay. Now your expectation of this certified piece
5 of mail, all right, where in Defendant's Exhibit Number 2
6 does it call for or provide you with the expectation of
7 receiving a certified piece of mail?

8 A. To my knowledge, it's not written on that document.

9 Q. Okay. So we know that the document that you actually
10 agreed to, the agreement that we have in place, the lease
11 agreement, there's nothing in that lease agreement that
12 would require either one of you to send certified mail,
13 right?

14 A. To my knowledge, it's not written.

15 Q. Okay. Well, ma'am, it certainly requires though
16 that some things be done in writing, right?

17 A. Certainly there are things that need to be in
18 writing, yes.

19 Q. For instance, hey, if we're gonna take your security
20 deposit, this is why? That would be one of those things,
21 wouldn't it?

22 A. I would expect a transaction piece of paper that
23 states where the money was moving to.

24 Q. You got an e-mail, didn't you?

25 A. I received an e-mail, yes.

1 used the service.

2 Q. Okay.

3 MR. MOORE: Ma'am, that's all I have.

4 Judge, that's all I have. Thank you, sir.

5 THE COURT: All right.

6 MR. GRIFFITH: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. GRIFFITH:

10 Q. Ms. Conley, do you have Defendant's Exhibit 2
11 available to you?

12 A. I do.

13 Q. Would you look on Page 1 at Paragraph 1 and publish
14 that, please.

15 A. Page 1, Paragraph 1. Landlord Tenant Act. This
16 rental agreement is governed by the South Carolina
17 Residential Landlord and Tenant Act.

18 Q. All right. And now turn to Page 4, Paragraph 22.
19 Do you see that?

20 A. I do.

21 Q. Could you read the sentence -- next to the last
22 sentence beginning any deduction?

23 A. Any deduction from the security deposit must be
24 itemized by the landlord in a written notice to the
25 tenant together with the amount due, if any, within

1 thirty days after termination of the tenancy and delivery
2 of possession and demand by the tenant, whichever is later.
3 The tenant shall provide the landlord in writing with a
4 forwarding address or new address to which the written
5 notice and amount due from the landlord may be sent.

6 Q. Did you receive a written notice from the landlord
7 showing an itemized reconciliation of what was done with
8 the security deposit and the prepaid rent?

9 A. I did not receive an itemized communication, no.

10 Q. That's required under this contract; is it not?

11 A. As stated on this page, yes.

12 Q. All right. Did you receive any written
13 reconciliation of any sort from the Defendant as to
14 where your money went, how your money was spent? Did
15 you receive it in the mail?

16 A. I did not receive anything in the mail, no.

17 **MR. GRIFFITH:** That's all.

18 **THE COURT:** And you forwarded a written -- you
19 provided a forwarding address?

20 **THE WITNESS:** Yes, I did.

21 **THE COURT:** Any further questions, Mr. Moore?

22 **RE CROSS EXAMINATION**

23 **BY MR. MOORE:**

24 Q. Ma'am, are you a hundred percent sure that you gave
25 her a forwarding address?

1 A. I gave a forwarding address verbally.

2 Q. Verbally? All right. So the lease says -- they
3 asked you about this. The tenant shall provide the
4 landlord in writing with a forwarding address. You told
5 the judge that you did, but actually what you did was
6 give a verbal address, right?

7 A. I don't know.

8 Q. Well, all right. Now we've got a couple of
9 different answers, don't we? You testified that you gave
10 her a verbal address and now you've just testified that
11 you don't know. Which one is it?

12 A. I know that I gave the verbal forwarding address.

13 Q. All right. Then what you just testified to a second
14 ago when you said I don't know, that wasn't true, was it?

15 A. I certainly mean that I said this verbally. I do
16 not know if I wrote the message down on a piece of paper
17 to give to her.

18 **MR. MOORE:** Your Honor, that's all we have.

19 **MR. GRIFFITH:** Nothing further.

20 **THE COURT:** All right. Thank you. You may step
21 down.

22 (Witness excused.)

23 **MR. GRIFFITH:** That's the Plaintiff's case, Your
24 Honor.

25 **THE COURT:** All right. Mr. Moore.

1 **MR. MOORE:** Your Honor, at this point we would
2 move for a directed verdict. The facts are pretty clear
3 obviously with what happened. Truth be told, we didn't
4 have a huge dispute over what they were before we even
5 came in today and the bottom line is there was a lease
6 agreement, the Plaintiff reached out, said and I can't
7 do it and my client in order to mitigate the damages
8 immediately tried to re-lease the premises and did that
9 and was finally able to get somebody in it in July.
10 We're not talking six months or any kind of unreasonable
11 delay. I think a 45-day turnaround is pretty good for
12 what we're dealing with here.

13 You know, the basis for this case, and I'll just
14 never understand it as long as I live. I may get my
15 clock cleaned today, but I just -- I'll never understand
16 it. I signed an agreement, I didn't do right under the
17 agreement, I told them that I couldn't do it, they went
18 and mitigated damages for me, but now somehow, some way
19 I'm entitled to rent back even though I'm obligated to do
20 it under an agreement and I'm entitled to my security
21 deposit back even though the lease agreement says we can
22 apply it to the rent.

23 Now in a nutshell that's what you have. Now my
24 colleagues over here will tell you well, pursuant to the
25 South Carolina Landlord and Tenant Act we've got to give

1 arguing the motion for summary judgment, they submitted
2 a brief and they left this part of the statute out, but
3 the statute says in 27-40-240 a person notifies or gives
4 a notice of notification to another person by taking steps
5 reasonably calculated to inform the other in ordinary
6 course whether or not the other actually comes to know
7 of it. A person receives a notice or notification when,
8 number one, it comes to his attention, or, and then it
9 goes on to say -- talk about certified letters and so
10 forth. The bottom line is the Plaintiff in this case has
11 acknowledged that she received notification from my client
12 by e-mail. It's a written communication however you slice
13 it. It's not a verbal communication, it is written, and
14 she had notification of it, and pursuant to 27-40-240
15 that's all she's got to do even if the lease does not
16 apply and all you did was apply the Landlord and Tenant
17 Act.

18 So, Judge, for those reasons we would move for a
19 directed verdict assuming Your Honor would grant that,
20 which we would hope you would. We would then be in a
21 position -- we're not interested in recovering three
22 hundred and some odd dollars under our counterclaim, we
23 would abandon that, but I just don't think they've proven
24 a case today.

25 **THE COURT:** How much money did the Plaintiff pay?

1 How much money did she give to your client?

2 MR. MOORE: It was \$1,200 for the security deposit
3 and nine hundred and --

4 MR. GRIFFITH: Twenty.

5 MR. MOORE: -- \$920 for the first month's rent.

6 THE COURT: All right. Response?

7 MR. GRIFFITH: Yes, Your Honor.

8 Mr. Moore set the law out pretty clearly, but I want
9 to call Your Honor's attention to the notebook we handed
10 up there. Under Tab 3, security deposits and prepaid
11 rent, upon termination of tenancy, any property or money
12 held by landlord as security must be returned less amounts
13 withheld by the landlord for approved rent and damages
14 which the landlord has suffered by reason of the tenant's
15 noncompliance. Here's the important part. Any deduction
16 from the security slash rental deposit must be itemized
17 by the landlord in a written document -- notice -- in a
18 written notice to the tenant together with the amount of
19 money -- excuse me -- with the amount due, if any, within
20 thirty days after termination of the tenancy and delivery
21 of possession and demand by the tenant, whichever is later.
22 Under Tab 4 it deals with Part B, which is the prepaid
23 rent or security deposit required to be sent by landlord
24 pursuant to Subsection A, that the tenant may recover three
25 times their actual damages.

1 would have been returned to them.

2 **THE COURT:** This lease is written pretty much in
3 accordance with the requirements of the Residential
4 Landlord and Tenant Act. Section 27-40-20, purposes;
5 rules of construction of the Landlord and Tenant Act says
6 that underlying purposes and policies of the chapter are
7 to simplify, clarify, modernize, and revise the law
8 governing rental of dwelling units and the rights and
9 obligations of the landlords and tenants.

10 So consistent with the act, this lease agreement
11 was drafted, so I think it is time to simplify, clarify,
12 modernize, and revise the laws concerning landlords and
13 tenants. And this Act was adopted, I guess, in -- it
14 looks like 1986 because most of it refers to the history
15 of 1986 and certainly that was prior to e-mail as far as
16 what was in existence at the time. But as far as what
17 exists now, and the purpose of the Act was to simplify,
18 clarify, modernize, I think we must consider what currently
19 exists, and that is e-mail being a recognized form of
20 communication.

21 One thing that hasn't been touched upon that's,
22 you know, in the testimony, the tenant talks about she
23 cancelled the lease, she didn't move in, she wanted her
24 money back, and also the obligations that flow from the
25 landlord and the tenant. Once a landlord rents a place

1 to a tenant and signs a lease with the tenant, the
2 landlord cannot rent it to anyone else. So in the
3 portion of the lease agreement, Paragraph 22, that upon
4 termination of the tenancy security may be applied to
5 the rent accrued and the amount of the loss of rents or
6 damages which the landlord suffered as a result by reason
7 of the tenant's noncompliance, the lease contemplates
8 that and the security deposit contemplates that if you
9 rent -- agree to rent me your place, you can't rent it to
10 anyone else, you're -- the place must stay right there
11 until you move in, and so when the tenant doesn't move in
12 the landlord -- it's part of the lease that the landlord
13 is suffering damages because she can't rent it to anyone
14 else until the situation is resolved with the tenant.

15 Now the parties were in constant communication,
16 there's no -- was no lack of understanding as I can see
17 it as to what was going on between the two. I believe
18 that the landlord has fully complied with the notice
19 requirements considering where I started with, and that
20 is e-mail didn't exist in 1986, but it exists now, and the
21 provisions regarding notice that counsel cited, a person
22 has notice of a fact if the person has actual knowledge of
23 it, received notice and notification of it and everything
24 and has reason to know it exists, it's clear that the
25 tenant was fully informed as to what the landlord was

1 considering, trying to do. The landlord's damages
2 exceeded what the tenant paid as a result of the tenant
3 not moving in and complying with the lease.

4 You know, we all have to make choices and when you
5 sign a contract -- you know, when you have the Kirby
6 vacuum cleaner man coming by your house and they talk you
7 into buying a vacuum cleaner, you're stuck with buying
8 it; the contract, once you sign it, and the Legislature
9 realized well, hey, that's just -- you need time to
10 reconsider, you need time to think about it and so they
11 changed it to give you an out to say, well -- I think
12 it's three days or whatever period of time it was you
13 can change your mind on that contract. And many other
14 instances. I think even on a loan closing it gives you
15 an opportunity to change your mind, a three-day right of
16 rescission. There's no such right of rescission in a rental
17 agreement on property, so once you signed the contract
18 it's an agreement, which is binding on both sides.

19 Now there are many unsuspecting landlords who get
20 caught with this provision that the Plaintiff is seeking
21 to -- to pin on the landlord in this case about well, you
22 didn't give me an itemized statement, you didn't comply
23 with the Act with regard to the itemization of damages, and
24 that typically applies where someone moves out at the end
25 of a lease and the landlord has a right to go in and



RESIDENTIAL RENTAL AGREEMENT

This form is not intended for use if "Option to Purchase" is in place.

State of South Carolina
County of Richland

This rental agreement made at 500 Hampton Forest Drive Columbia, South Carolina, this 21st day of April, 2016, between Morgan Conley Tenant(s) (hereinafter called "LANDLORD"), and April Morganson Agent for Owner (hereinafter called "TENANT"), shall provide as follows:

1. **LANDLORD TENANT ACT:** This Rental Agreement is governed by the South Carolina Residential Landlord and Tenant Act.
 2. **LOCATION:** The Landlord hereby rents to the Tenant and the Tenant hereby rents from the Landlord a parcel of property located in the county of Richland, State of South Carolina, which parcel of land with improvements will constitute the premises. Said parcel of land is more particularly described as follows: N/A
 3. **TERMS:** This Rental Agreement shall commence on the 7th day of May, 2017, and end on the 7th day of May, 2016, and end on the day of any extension thereof that Tenant will quietly and peaceably deliver up possession of the premises in good order and condition, reasonable wear and tear expected, free of Tenant's personal property, garbage and other waste, and return all keys to the Landlord.
 4. **LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:** See Lead-Based Paint Disclosure Addendum attached (only applies to most rental properties built before 1978.)
 5. **RENTAL APPLICATION:** The Tenant acknowledges that the Landlord has relied upon the rental application, a copy of which is attached hereto, as an inducement for entering into this agreement, and the Tenant warrants to the Landlord that the facts stated in the application are true to the best of Tenant's knowledge. If any facts stated in the rental application prove to be untrue, the Landlord shall have the right to terminate the residency immediately and to collect from the Tenant any damages including reasonable attorney fees resulting therefrom.
 6. **RENT:** Tenant agrees to pay Landlord a rent of \$1200 per month, payable in advance, on or before the first day of every month during said term for a total rent of \$1200. The rent is payable to: April Morganson or as Tenant may be advised from time to time in writing.
- NOTICE TO TENANT: IF TENANT DOES NOT PAY RENT WITHIN FIVE DAYS OF THE DUE DATE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTES WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.**

Tenant further agrees to pay a late fee of \$ 20 per day if rent is paid after the 10th day of the month, and an additional fee of \$ 20 after the 10th day of the month.

Where the term of the Rental Agreement commences or terminates on a day other than the first day of the month, Tenant shall pay rent unto the Landlord in the amount of \$ 25 per day for each day of the month of commencement or termination of the Rental Agreement, payable prior to the Tenant taking possession upon commencement of the Rental Agreement, and payable on the first day of the final month of the Rental Agreement upon termination.

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7. **OCCUPANTS:** Only persons designated in the rental agreement or as further modified or agreed to in writing by Landlord shall reside in the rented premises. For purposes of this rental agreement the designated occupants are: Morgan Conley, designated visitors of Morgan Conley

In no event shall more than 4 persons be allowed to occupy said premises.

8. **RETURNED CHECKS:** Tenant agrees to pay \$50 for each dishonored check for bookkeeping costs and handling charges, plus late charges if the check is not made good before the sixth day after the due date. All future rent and charges, if more than one check is returned, shall be paid in the form of cash, cashier's checks, certified check or money order. If any check for the security deposit or the first month's rent is returned for insufficient funds, Landlord may declare this rental agreement void and immediately terminated.
9. **RENEWAL TERMS:** With thirty (30) days written notice, as defined in Paragraph 18, either party may terminate this agreement at the end of the initial term, but if no notice is given, then the agreement will be extended on a month-to-month basis on the same terms and conditions contained in this agreement. Thirty (30) days written notice by either party is required prior to termination during such month-to-month term.
10. **SUBLEASE:** Tenant shall not assign or sublet said premises, or any part thereof without the written consent of Landlord. Tenant must have written permission from Landlord for guests to occupy the premises for more than 30 days.
11. **UTILITIES AND SERVICES:** Tenant agrees to pay for utilities and services except: trash/recycling services which will be paid by Landlord.

In the event of Tenant default on payment of utilities Landlord may pay and charge Tenant as additional rent together with any penalties, charges and interest. Tenant shall be liable for any inspections required by local authorities/utility companies due to Tenant's failure to obtain service at time of occupancy or to maintain said service during the term of this agreement. Tenant shall pay all costs of hook-ups and connection fees and security deposits in connection with providing utilities to premises during the term of the Lease.

12. **TENANT OBLIGATIONS:** Tenant agrees to keep the dwelling unit and all parts of the premises that he leases safe and clean. In the case of a single-family house or duplex, Tenant shall keep the yard mowed, watered and free of fire ants, keep the roof and gutters free of debris, the shrubs neatly trimmed, and landscaping maintained. Tenant agrees to be responsible for removal of Tenant's contagious and other hazardous materials. Tenant agrees to comply with the lease and rules and regulations the Landlord may adopt concerning the Tenants' use and occupancy of the premises;

Tenant, or any member of Tenant's family, guest or other person under the Tenant's control, shall conduct themselves in a manner that will not disturb other Tenants' and neighbors' peaceful enjoyment of the premises. Tenant, or any member of Tenant's family, guest or other person under the Tenant's control, shall not engage in or facilitate criminal or drug related activities. Any such violation constitutes a substantial violation of the Lease and a material noncompliance with the Lease and is grounds for termination of tenancy and eviction from the premises.

It is specifically understood that Tenant will, at Tenant's expense, keep sinks, lavatories, and commodes open, reporting any initial problem within five (5) days of occupancy, repair any and all damages caused by tenancy and replace any burned out light bulbs. Tenant agrees to report to Landlord any malfunction of or damage to electrical, plumbing, HVAC systems, smoke detectors, and any occurrence that may cause damage to the property. Tenant also agrees to pay for the cost of all repairs made necessary by negligence or careless use of the premises and pay for repairs/loss resulting from theft, malicious mischief or vandalism by Tenant and their guests. Tenant agrees to provide copies to Landlord of any inspection reports or repair estimates that Tenant may obtain.

Tenant agrees to be responsible for and to make at Tenant's expense all routine maintenance, including but not limited to, stoppage of sewer because of misuse or broken water pipes/fixtures due to neglect or carelessness of Tenant. No repairs, alterations or changes in or to said premises or the fixtures or appliances contained therein, shall be made except after written consent of Landlord, and shall be the responsibility of the Tenant for the cost of restoring said premises to their original condition if Tenant makes any such unauthorized modifications. **NO REPAIR COSTS SHALL BE DEDUCTED FROM RENT BY TENANT.** All improvements made by Tenant to the said premises shall become the property of the Landlord. Locks/Deadbolts shall not be changed without the expressed permission of the Landlord.

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Tenant is directly responsible for any damage caused by Tenant's appliances and/or furniture. Tenant is responsible for changing HVAC filters, reporting any water leaks, lighting pilot lights, checking for tripped breakers, changing smoke detector batteries and minor housekeeping repairs. Tenants will be help liable for damage to HVAC systems caused by dirty or missing filters and damages resulting from unreported problems.

Tenant acknowledges that Tenant has inspected the premises and agrees that the premises and any common areas are safe, fit and habitable condition. Tenant acknowledges receipt of instructions of smoke detector operation.

13. **MAINTENANCE OF PREMISES, PEST CONTROL:** Landlord agrees to make repairs and do what is necessary to keep the premises in a fit and habitable condition as specified in South Carolina Residential Landlord and Tenant Act. The Landlord further agrees to maintain in reasonably good and safe working condition, all electrical, gas, plumbing, sanitary, HVAC, smoke detectors and other facilities supplied by him. Landlord is not responsible for changing batteries in smoke detectors.

Tenant shall report any pest problem within three (3) days of possession. Tenant's failure to identify any pest infestation with said three (3) days shall constitute Tenant's agreement that premises has no infestation of any kind. Tenant is responsible for reporting any suspected or known termite infestation but is not responsible for termite control. Any future infestation of any kind, less termites, shall be the responsibility of ☒ Tenant ☐ Landlord.

14. **ESSENTIAL SERVICES AND APPLIANCES:** The Landlord is required to provide essential services; meaning sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the Tenant and supplied by a direct public utility connection. The following appliances present in the dwelling unit are specifically included by this rental agreement as being deemed to be supplied by the Landlord: ☒ stove, ☒ refrigerator, ☒ dishwasher, ☒ disposal, ☒ washer, ☒ dryer, ☒ microwave, ☐ trash compactor, ☐ other.

15. **INSURANCE:** Tenant shall be responsible for insuring his/her own possessions against fire and other catastrophes. Landlord and Tenant hereby release each other from liability for loss or damage occurring on or to the leased premises or the premises of which they are a part of the contents of either thereof, caused by fire or other hazards ordinarily covered by fire and extended coverage insurance policies and each waives all rights of recovery against the other for such loss or damage. Willful misconduct lawfully attributable to either party, whether in whole or in part a contributing cause of the casualty giving rise to the loss or damage, shall not be excused under the foregoing release and waiver.

16. **RIGHT TO ACCESS:** The Tenant shall not unreasonably withhold consent to the Landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply necessary or agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

The Landlord or Landlord's agent may enter the dwelling unit without consent of the Tenant:

- (a) At any time in case of emergency, including but not limited to prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency; and
(b) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect, or pest treatment, and the like, provided that the Landlord announces intent to enter to perform services; and
(c) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the Tenant and that prior to entering the Landlord announces intent to enter to perform services.

The Landlord shall not abuse the right of access or use it to harass the Tenant. Except for section 16(a), 16(b), and 16(c), the Landlord shall give the Tenant at least 24 hours notice of intent to enter and may enter only at reasonable times.

The Landlord has no other right of access except pursuant to court order, as permitted by the South Carolina Residential Landlord and Tenant Act when accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings, or unless the Tenant has abandoned or surrendered the premises.

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17. **MILITARY CLAUSE:** If the Tenant is a member of the Armed Forces of the United States, stationed in the _____ area, and shall receive permanent change of station orders out of the _____ area, Tenant may, upon presentation of a copy of said orders of transfer to the Landlord, along with thirty (30) days written notice of intent to vacate and payment of all rent to the expiration date of such written notice, and any miscellaneous charges in arrears, terminate this Rental Agreement. Normal enlistment termination or other type discharge from Armed Forces, unless due to conditions beyond the service member's control, or acceptance of government quarters is not a permanent change of station and is not justification for lease termination. Withholding knowledge of pending transfer or discharge at time of entry into this Rental Agreement voids any consideration or protection offered by this section.
18. **DEFINITION OF "THIRTY (30) DAY NOTICE":** Any written notice given by either party to the other party in order to meet a thirty (30) day notice requirement will be deemed given, and the thirty (30) days deemed to commence on the first day of the calendar month following the date of receipt of said notice. Any termination permitted by other sections contingent upon a thirty (30) day notice will then be effective on the last day of the calendar month following receipt of said notice. If expiration date of lease is not on the last day of the calendar month, then thirty (30) days notice is required to conform to the expiration dates.
19. **DESTRUCTION OR DAMAGE TO PREMISES:** If the dwelling unit or premises are damaged or destroyed by fire or casualty to the extent that normal use and occupancy of the dwelling unit is substantially impaired, the Tenant may immediately vacate the premises and notify the Landlord in writing within seven days thereafter of Tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the Tenant's liability for rent is reduced in proportion to the diminution in the fair-market rental value of the dwelling unit. If the rental agreement is terminated, the Landlord shall return the security deposit and all prepaid rent. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty.
20. **CONDEMNATION:** Tenant hereby waives any injury, loss or damage, or claim therefore against Landlord resulting from any exercise of a power of eminent domain of all or any part of the rented premises or surrounding grounds of which they are a part. All awards of the condemning authority for the taking of land, parking areas, or buildings shall belong exclusively to the Landlord. In the event substantially all of the rented premises shall be taken, this Rental Agreement shall terminate as of the date the right to possession vested in the condemning authority and rent shall be apportioned as of that date. In the event any part of the property and/or building or buildings of which the rented premises are a part (whether or not the rented premises shall be affected) shall be taken as a result of the exercise of a power of eminent domain, and the remainder shall not, in the opinion of the Landlord, constitute an economically feasible operating unit, Landlord may, by written notice to Tenant given within sixty (60) days after the date of taking, terminate this Rental Agreement as of a date set out in the notice not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of termination date.
21. **ABSENCE, NON-USE AND ABANDONMENT:** The unexplained absence of a Tenant from a dwelling unit for a period of 15 days after default in the payment of rent must be construed as abandonment of the dwelling unit. If the Tenant abandons the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy, subject to the other Landlord's remedies. If the Landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the Landlord accepts the abandonment as a surrender, the rental agreement is considered to be terminated by the Landlord as of the date the Landlord has notice of the abandonment. When a dwelling unit has been abandoned or the rental agreement has come to an end and the Tenant has removed a substantial portion of personal property or voluntarily and permanently terminated the utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of \$500 or less, the Landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.
22. **SECURITY DEPOSIT:** Tenant agrees to deposit with Landlord a security deposit of \$1200 to be held as security for the full and faithful performance by the Tenant of all terms and conditions herein, it being understood and agreed to that no part of this deposit is to be applied to any rent which may become due under this rental agreement. Upon termination of the tenancy, property or money held by the Landlord as security may be applied to the payment of accrued rent and the amount of loss of rent or damages which the Landlord has suffered by reason of the Tenant's noncompliance with the South Carolina Residential Landlord and Tenant Act. Any deduction from the security deposit must be itemized by the Landlord in a written notice of the Tenant together with the amount due, if any, within 30 days after termination of the tenancy and delivery of possession and demand by the Tenant, whichever is later. The Tenant shall provide the Landlord in writing with a forwarding address or new address to which the written notice and amount due from the Landlord may be sent.

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If the Tenant fails to provide the Landlord with the forwarding or new address and fails to return the following:
☐ pool tags, ☐ keys for mail box, ☒ keys to unit (including deadbolt, storage area), ☐ other N/A
the Tenant is not entitled to damages under this subsection provided the Landlord (1) had no notice of the Tenant's whereabouts; and, (2) mailed the written notice and amount due, if any, to the Tenant's last known address. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within five (5) business days after receiving notice from the Landlord.

23. **NONCOMPLIANCE WITH RENTAL AGREEMENT OR FAILURE TO PAY RENT:** If there is a noncompliance by the Tenant with the rental agreement other than nonpayment of rent or a noncompliance with Paragraph 12 above, the Landlord may deliver a written notice to the Tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice, if the breach is not remedied in 14 days.

The rental agreement shall terminate as provided in the notice except that: If the breach is remediable by repairs or otherwise and the Tenant adequately remedies the breach before the date specified in the notice, or if such remedy cannot be completed within 14 days, but is commenced within the 14-day period and is pursued in good faith to completion within a reasonable time, the rental agreement shall not terminate by reason of the breach.

If rent is unpaid when due and the Tenant fails to pay rent within five days from the date due, the Landlord may terminate the rental agreement provided the Landlord has given the Tenant written notice of nonpayment and Landlord's intention to terminate the rental agreement. If the rent is not paid within that period, said notice is contained herein Paragraph 5.

The Landlord may recover actual damages and obtain injunctive relief in magistrate's or circuit court without posting bond for any noncompliance by the Tenant with the rental agreement or Paragraph 12 above. If the Tenant's noncompliance is willful other than nonpayment of rent, the Landlord may recover reasonable attorney's fees. If the Tenant's nonpayment of rent is not in good faith, the Landlord is entitled to reasonable attorney's fees.

If there is noncompliance by the Tenant with Paragraph 12 above, materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord specifying the breach and requesting that the Tenant remedy it within that period of time, the Landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and shall in addition have the remedies available under the South Carolina Residential Landlord Tenant Act.

If there is noncompliance by the Tenant with Paragraph 12 above materially affecting health and safety other than as set forth in the preceding paragraph, and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord if it is not an emergency, specifying the breach and requesting that the Tenant remedy within that period of time, the Landlord may terminate the rental agreement. If the rental agreement is terminated, the Landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees. Any claim not satisfied by Tenant may be turned in to the credit bureau or collection agency.

24. **REMEDY AFTER TERMINATION:** If the rental agreement is terminated, the Landlord has a right to possession, for rent, and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees, collection costs, and court costs.
25. **NOTICE:** A Landlord receives notice when it is delivered at the place of business of the Landlord through which the rental agreement was made or at any place held out by Landlord as the place of receipt of the communication.
26. **PROHIBITIVE EQUIPMENT/FURNITURE:** Tenant agrees not to place antennas, satellite dishes, waterbeds, and auxiliary heaters without written permission from Landlord.
27. **INVENTORY:** Any furnishing and equipment to be furnished by Landlord shall be set out in a special inventory. The inventory shall be signed by both Tenant and Landlord concurrently with this Rental Agreement and shall be a part of this Agreement.

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28. **PETS:** Tenant shall not keep domestic or other animals on or about the premises without the PRIOR WRITTEN CONSENT of the Landlord. Landlord, at Landlord's sole discretion, may consent if Tenant makes the following payments: (1) a non-refundable deposit of \$N/A and (2) rent for the pet(s) in the total amount of \$N/A, for the term of this agreement. Tenant shall be responsible for the animal, its behavior, and any damage done by the animal. The Landlord shall have the right to withdraw consent and demand removal of any previously permitted animal upon the first complaint registered against such animal or upon evidence of injury or damage to person or property caused by the animal.
29. **WAIVER:** A Tenant is considered to have waived violation of a Landlord's duty to maintain the premises as set forth by the Rental Agreement or violation of the Landlord's duties under the South Carolina Residential Landlord and Tenant Act, as defense in an action for possession based upon nonpayment of rent, or in an action for rent concerning a period where the Landlord has no notice of the violation of the duties, fourteen (14) days before rent is due for violations involving services other than essential services, or the Landlord has no notice before rent is due which provides a reasonable opportunity to make emergency repairs necessary for the provision of essential services. No modification, change, or cancellation hereof shall be valid unless in writing and executed by all parties hereto. No representation or promise has been made by either party hereto except as herein stated.
30. **PEACEFUL ENJOYMENT:** The Landlord covenants that the Tenant, on paying the rent and performing the covenants hereof, shall and may peaceably and quietly have, hold, and enjoy the rented premises for the term mentioned without hindrance or interruption by the Landlord.
31. **PROVISIONS:** The provisions of this Rental Agreement shall be binding upon and inure to the benefit of the Landlord and the Tenant, and their respective successors, legal representatives, and assigns.
32. **SUBORDINATION:** Tenant's rights are subject to any bona fide mortgage which now covers said premises and which may hereafter be placed on said premises by Landlord. Tenant shall upon request by Landlord execute a subordination of its rights under this Rental Agreement to any mortgage given by Landlord hereunder, whether to secure construction or permanent or other financing. Resident shall upon request by Landlord promptly execute a certification of good standing certifying the terms of this Rental Agreement, its due execution, the rental provisions hereof, or the terms of amendments hereto, if any, and any other information reasonably requested.
33. **RENTAL RATE ADJUSTMENT:** On and after the expiration of the initial term of this lease, the Landlord, at Landlord's discretion, may alter the rental rate in effect provided only that written notice of such alteration is delivered as first class mail to the US Postal Service, postage prepaid at least fifteen (15) days prior to the effective date of alteration.
34. **TRUST ACCOUNT INTEREST:** ACCORDING TO THE RULES AND REGULATIONS OF THE SOUTH CAROLINA REAL ESTATE COMMISSION AND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE HAS THE OPTION TO PLACE TENANT'S SECURITY DEPOSIT INTO AN INTEREST BEARING ACCOUNT AND TO RETAIN ALL INTEREST INCURRED IN SAID ACCOUNT. TENANT AGREES TO AND UNDERSTANDS THAT THE TENANT HAS BEEN INFORMED OF TENANT'S RIGHT TO OWNERSHIP OF THE INTEREST BUT RELINQUISHES TO THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE BY THIS WRITTEN AGREEMENT SAID RIGHT OF OWNERSHIP.
35. **RULES AND REGULATIONS:** The common area facilities, if any such as swimming pool, laundry room, recreational, and other common area facilities, when open and operating, are subject to applicable rules and regulations posted by the Landlord. The Tenant agrees to observe faithfully all rules and regulations that the Landlord has now or may hereafter adopt for the use of the premises.
37. **JOINT RESPONSIBILITY:** If this Rental Agreement is executed by more than one (1) Tenant, the responsibility and liabilities herein imposed shall be considered and construed to be joint and several, and the use of the singular shall include the plural.

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36. **LANDLORD'S ADDRESS FOR COMMUNICATIONS:** All notices, requests, and demands unless otherwise stated herein, shall be addressed and sent to:

Mail: _____

Phone: (Home) **803-743-2620**

(Work) **803-312-5631**

38. **CAPTIONS:** Any heading preceding the text of any paragraph hereof is inserted solely for convenience of reference and shall not constitute a part of this Rental Agreement, nor shall they affect its meaning, construction or affect.
39. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.
40. **ADDITIONAL TERMS:** _____

WHEREFORE, the parties have executed this Rental Agreement or caused the same to be executed by their authorized representative, the day and year first above written.

THIS RENTAL AGREEMENT supersedes all prior written or oral agreements and can be amended only through a written agreement signed by both parties. Provisions of this Rental Agreement shall bind and inure to the benefit of the Landlord and to the Tenant and their respective heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seals in duplicate the day and year above written.

Morgan J Conley
Tenant

Witness to Tenant

Tenant's Email Address: mconley2010@gmail.com

Tenant

Witness to Tenant

Tenant's Email Address: _____

Phillip [Signature]
Landlord

Witness to Landlord

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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“SECTION 27-40-240. Notice.

(B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

(3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt.”

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2019-001533

RECEIVED
DEC 20 2019
SC Court of Appeals

Morgan Conley.....Appellant,

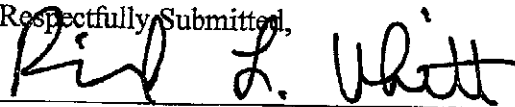
v.

April Morganson.....Respondent.

CERTIFICATE OF COUNSEL
RULE 210 (g), SCACR

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by the parties, and not any other material.

Respectfully Submitted,



Richard L. Whitt, S.C. Bar #: 62895
Jefferson D. Griffith, III, S.C. Bar #: 2299
Whitt Law Firm, LLC
Post Office Box 362
Irmo, South Carolina 29063
(803) 995-7719
Attorneys for Appellant.

December 20, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2016-CP-40-04139
Appellate Case No. 2019-001533

Morgan Corley.....Plaintiff/Appellant,

v.

April Morganson.....Defendant/Respondent..

SUPPLEMENTAL RECORD ON APPEAL

RECEIVED

MAR 20 2020

~~96 Court of Appeals~~

S. Jahue Moore, Jr. (Bar No: 72584)
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West Columbia, South Carolina 29171
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Attorney for Appellant

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Rental Agreement between the parties	13

1 Ms. Morganson?

2 A. Yes, I did.

3 Q. Did you ever receive either prepaid rent or security
4 deposit from Ms. Morganson?

5 A. No.

6 Q. Did you ever receive a rent -- a written accounting
7 from the landlord showing you how the prepaid rent or --
8 security deposit and the prepaid rent was used?

9 A. No, I did not.

10 Q. And have you received one up until this day?

11 A. No, I have not.

12 **MR. GRIFFITH:** That's all the questions we have for
13 this witness, Your Honor.

14 **THE COURT:** All right. Mr. Moore.

15 **CROSS-EXAMINATION**

16 **BY MR. MOORE:**

17 Q. Ma'am, let me ask you this. You just testified that
18 you signed a written lease agreement with my client?

19 A. Yes.

20 Q. Okay. When did you do that?

21 A. It was May of 2016.

22 Q. Okay. Did anybody pressure you or force you to sign
23 it?

24 A. No, I was not pressured.

25 Q. All right. Did you read it?

1 A. Yes, I did read the contract.

2 Q. Did you understand it?

3 A. Yes, I do understand it.

4 Q. All right. Now when you signed it and you read it
5 and you understood it, what was your understanding with
6 regard to your obligation to pay rent?

7 A. I understand that I needed to make a monthly payment
8 in regards to rent.

9 Q. Right. Each month that goes by you pay to live in
10 April's house, right?

11 A. I never lived at that -- at the townhouse.

12 Q. Ma'am, I understand that you never lived there.
13 That's not what I'm asking. Pursuant to the actual signed
14 document that you signed and understood, your obligation
15 was to pay rent for a year, right?

16 A. Yes.

17 Q. Okay. And you were gonna pay monthly for a year to
18 live in Ms. April's home, right?

19 A. I agreed to a contract, yes.

20 Q. Okay. So we know there was a contract, right?

21 A. Yes.

22 Q. Okay. Who was the person to breach the contract?

23 A. In my knowledge, it was April that breached.

24 Q. I see. Now let me ask you this. After you signed
25 the agreement, did you send Ms. April an e-mail or a text

1 (Defendant's Exhibit Number 1 was marked for
2 identification.)

3 BY MR. MOORE:

4 Q. And, ma'am, let me show you what's been marked
5 Defendant's Exhibit Number 1. Do you see here at the
6 bottom -- I suppose this would be a text message or an
7 e-mail. Do you remember sending that?

8 A. Where?

9 Q. Right here at the bottom. Do you see that big
10 paragraph right there? Did you send that?

11 A. Yes, I did send this message.

12 Q. All right. Now it says here that you sent it on
13 May the 9th at 9:34 PM. Is that when you sent it?

14 A. Yes.

15 Q. And that would have been a couple of days after you
16 had actually signed the actual lease agreement, right?

17 A. May the 9th, yes.

18 Q. Yeah.

19 All right. Now it says here "I wanted to touch base
20 with you. I have a few reservations regarding our lease
21 agreement. I have reviewed my finances, prayed about the
22 situation and with the roommate search coming up short, I
23 am a bit stressed about having the funds to pay the rent
24 and utilities for the rental term. With this said, going
25 forward would you be willing to break the lease as I have

1 truly you could short circuit this because the facts
2 really aren't in dispute. It's just a matter -- he is
3 right. It's just a matter of whether we followed the
4 law. Judge Manning's already made the determination that
5 we have, but, you know, if we're gonna have a trial and
6 their position is you've just got to do it, I'm just
7 trying to do it. And I hate to go back and take up a
8 bunch of the Court's time, but I've got to go back through
9 the history of the case.

10 **THE COURT:** I have nothing but time.

11 **MR. MOORE:** Yes, sir. Very well.

12 **THE COURT:** We're on duty.

13 **MR. GRIFFITH:** Thank you, Your Honor.

14 **MR. MOORE:** Very good.

15 BY MR. MOORE:

16 Q. Well, ma'am -- all right. Now the written
17 communication, after you said I want to -- would you
18 consider breaking this agreement, you basically said --
19 or April wrote back to you and said I can't do that,
20 right?

21 A. Yes, that was the message, that she would not. So,
22 yes.

23 Q. Okay. Now she benefitted from this contract, right?

24 A. She owns the property, yes.

25 Q. Right. Okay. So she benefitted from it and you

1 just in your mind this thing, this agreement, is just
2 invalid; is that what you're honestly telling this Court?

3 A. We entered an agreement for housing. I never moved
4 into it.

5 Q. Whose decision was that?

6 A. It was my decision not to move in.

7 Q. I see. So April had nothing to do -- April's
8 obligation under the terms of this lease was not to come
9 and get you and take your property and move it into her
10 house, was it?

11 A. No.

12 Q. Okay. Now when you asked her if she would mind
13 tearing up this lease, breaching -- and breaking it, she
14 said no, but she didn't say go to blazes, I'm not gonna
15 help you, did she? She actually tried to help you, didn't
16 she?

17 A. She did put the property on -- up for lease again,
18 yes.

19 Q. That was a nice thing for her to do, wasn't it,
20 because it means that if she were to get it re-leased,
21 that would mean that your obligation to pay rent would
22 then terminate, right?

23 A. If she found another tenant to move into the place,
24 yes.

25 Q. And that benefits you because you didn't want to

1 move in and couldn't move in, right?

2 A. In the beginning, yes, I wanted to move into the
3 property.

4 Q. All right. But then you told her you couldn't and
5 so she put the thing back on the market so that she could
6 get somebody else in there, right?

7 A. Yes, she made an attempt to put someone else in the
8 property.

9 Q. All right. Now let's talk about the actual lease
10 agreement, okay? We've talked about this rent. The
11 agreement -- the lease agreement was from May the 7th
12 until May the 7th of the following year, correct?

13 A. Yes, it was.

14 Q. All right. Now May the 7th was supposed to be the
15 start date. When, to your knowledge, was April finally
16 able to get another tenant in the building?

17 A. I believe there was an e-mail to me stating that she
18 had a tenant moving in in July of 2016.

19 Q. Okay. So May, June, July, all right? Three months,
20 right? That's -- May, June, July, that's three months,
21 right?

22 A. Yes, that's three months; May, June, July.

23 Q. Okay. So would you say that April made an effort to
24 get somebody into the building?

25 A. She placed the property up for rent, yes.

1 Q. All right. So I suppose then the answer to my
2 question is that's right, Mr. Moore, I have not made my
3 rental obligation under the lease agreement. Would that
4 be right?

5 **MR. GRIFFITH:** Asked and answered, Your Honor.

6 He asked her if she paid it, she said she paid one
7 -- she said she paid the one payment and no more.

8 **THE COURT:** All right. I overrule the objection.

9 BY MR. MOORE:

10 Q. So by paying that one month in rent, you haven't met
11 your rental obligation, have you, for the three months?

12 A. I have not made a payment for June or July, no.

13 Q. Okay. And that's what you answered last time.

14 That's not my question. My question -- I know -- we know
15 what you did. We know that you paid one month's rent and
16 didn't pay two more, all right? And if we know that the
17 rental agreement that you signed obligates you to pay once
18 a month, we would know then that you have not met your
19 obligation under the lease as it relates to paying rent,
20 right?

21 A. No.

22 Q. Okay. So as we sit here today, you've sued my
23 client; yet you come into court and acknowledge that you
24 haven't met your obligation under the lease, have you?

25 A. My actions are what I -- I understood to be right.

1 Q. Now, ma'am, let's look at Paragraph 22. You say you
2 don't remember it. You've sued my client for shenanigans,
3 I suppose, with the security deposit. There's the
4 paragraph dealing with security deposits. Could you read
5 that for us?

6 A. Number 22, security deposit. Tenant agrees to
7 deposit with landlord a security deposit of \$1,200 to be
8 held as security for the full and faithful performance of
9 the tenant of all terms and conditions herein. It being
10 understood and agreed to that no part of the deposit is
11 to be applied to any rent which may become due under this
12 rental agreement. Upon termination of the tenancy,
13 property or money held by the landlord as security may be
14 applied to the payment of accrued rent in the amount of
15 loss of rents or damages which the landlord has suffered
16 by reason of the tenant's noncompliance with the South
17 Carolina Residential Landlord and Tenant Act. Any
18 deduction from the security deposit must be itemized by
19 the landlord in a written notice to the tenant together
20 with the amount due, if any, within thirty days after
21 termination of the tenancy and delivery of possession and
22 demand by the tenant, whichever is later. The tenant shall
23 provide the landlord in writing with a forwarding address
24 or new address to which the written notice and amount due
25 from the landlord may be sent.

1 since you took upon yourself to turn off the electricity
2 to the property without -- whatever.

3 Ma'am, she told you that she wasn't gonna give the
4 security deposit back since you haven't paid the rent,
5 all right? What more in a written communication would you
6 have her do other than tell you exactly why the security
7 deposit is not coming back and why it's being kept? You
8 testified she gave you no written communication, didn't
9 you?

10 A. Written communication via mail.

11 Q. Ah. The e-mail is not -- the words in the e-mail --
12 the written -- the written words that you actually saw on
13 a computer screen, your theory of the case factually is
14 that if it were on a piece of paper and you had seen it,
15 then somehow, some way this lawsuit would have never been
16 brought?

17 A. To my knowledge, in business when you make a payment
18 you are to be given a receipt of transaction. That -- I
19 never got a receipt of transaction.

20 Q. A receipt of transaction. What exactly do you mean
21 by that?

22 A. I never received an invoice or receipt of movement
23 of money.

24 Q. Ma'am, she sent you an e-mail that said we're not
25 giving your security deposit back because you haven't

1 paid rent. What more do you want?

2 A. I expected to get a certified piece of mail with an
3 invoice of transaction.

4 Q. Okay. Now your expectation of this certified piece
5 of mail, all right, where in Defendant's Exhibit Number 2
6 does it call for or provide you with the expectation of
7 receiving a certified piece of mail?

8 A. To my knowledge, it's not written on that document.

9 Q. Okay. So we know that the document that you actually
10 agreed to, the agreement that we have in place, the lease
11 agreement, there's nothing in that lease agreement that
12 would require either one of you to send certified mail,
13 right?

14 A. To my knowledge, it's not written.

15 Q. Okay. Well, ma'am, it certainly requires though
16 that some things be done in writing, right?

17 A. Certainly there are things that need to be in
18 writing, yes.

19 Q. For instance, hey, if we're gonna take your security
20 deposit, this is why? That would be one of those things,
21 wouldn't it?

22 A. I would expect a transaction piece of paper that
23 states where the money was moving to.

24 Q. You got an e-mail, didn't you?

25 A. I received an e-mail, yes.

SECTION 27-40-240. Notice.

(A) A person has notice of a fact if:

- (1) the person has actual knowledge of it;
- (2) the person has received a notice or notification of it; or

(3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

(B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

- (1) it comes to his attention; or

(2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication; or

(3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt.

(C) "Notice", knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to the individual's attention if the organization had exercised reasonable diligence.

(D) The time within which an act is to be done must be computed by reference to South Carolina Rules of Civil Procedure.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 3.

Subarticle IV

General Provisions

SECTION 27-40-310. Terms and conditions of rental agreement.

(a) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(b) In absence of agreement, the tenant shall pay as rent the fair-market rental value for the use and occupancy of the dwelling unit.

(c) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless the tenant is otherwise notified in writing, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(d) Unless the rental agreement fixes a definite term, the tenancy is week to week in case of a roomer who pays weekly rent and in all other cases month to month.

HISTORY: 1986 Act No. 336, Section 1.



RESIDENTIAL RENTAL AGREEMENT

This form is not intended for use if "Option to Purchase" is in place.

State of South Carolina
County of Richland

This rental agreement made at 500 Hampton Forest Drive Columbia, South Carolina, this 21st day of April, 2016, between Morgan Conley Tenant(s) (hereinafter called "TENANT"), and April Morganson Agent for Owner (hereinafter called "LANDLORD"), shall provide as follows:

- LANDLORD TENANT ACT:** This Rental Agreement is governed by the South Carolina Residential Landlord and Tenant Act.
- LOCATION:** The Landlord hereby rents to the Tenant and the Tenant hereby rents from the Landlord a parcel of property located in the county of Richland, State of South Carolina, which parcel of land with improvements will constitute the premises. Said parcel of land is more particularly described as follows: N/A
- TERMS:** This Rental Agreement shall commence on the 7 day of May, 2016, and end on the 7th day of May, 2017. Tenant covenants that upon the termination of this Rental Agreement, or any extension thereof that Tenant will quietly and peaceably deliver up possession of the premises in good order and condition, reasonable wear and tear expected, free of Tenant's personal property, garbage and other waste, and return all keys to the Landlord.
- LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:** See Lead-Based Paint Disclosure Addendum attached (only applies to most rental properties built before 1978.)
- RENTAL APPLICATION:** The Tenant acknowledges that the Landlord has relied upon the rental application, a copy of which is attached hereto, as an inducement for entering into this agreement, and the Tenant warrants to the Landlord that the facts stated in the application are true to the best of Tenant's knowledge. If any facts stated in the rental application prove to be untrue, the Landlord shall have the right to terminate the residency immediately and to collect from the Tenant any damages including reasonable attorney fees resulting therefrom.
- RENT:** Tenant agrees to pay Landlord a rent of \$1200 per month, payable in advance, on or before the first day of every month during said term for a total rent of \$1200. The rent is payable to: April Morganson or as Tenant may be advised from time to time in writing.

NOTICE TO TENANT: IF TENANT DOES NOT PAY RENT WITHIN FIVE DAYS OF THE DUE DATE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTES WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.

Tenant further agrees to pay a late fee of \$20 per day if rent is paid after the 10th day of the month, and an additional fee of \$20 after the 10th day of the month.

Where the term of the Rental Agreement commences or terminates on a day other than the first day of the month, Tenant shall pay rent unto the Landlord in the amount of \$25 per day for each day of the month of commencement or termination of the Rental Agreement, payable prior to the Tenant taking possession upon commencement of the Rental Agreement, and payable on the first day of the final month of the Rental Agreement upon termination.

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7. **OCCUPANTS:** Only persons designated in the rental agreement or as further modified or agreed to in writing by Landlord shall reside in the rented premises. For purposes of this rental agreement the designated occupants are: Morgan Conley, designated visitors of Morgan Conley

In no event shall more than 2 persons be allowed to occupy said premises.

8. **RETURNED CHECKS:** Tenant agrees to pay \$50 for each dishonored check for bookkeeping costs and handling charges, plus late charges if the check is not made good before the sixth day after the due date. All future rent and charges, if more than one check is returned, shall be paid in the form of cash, cashier's checks, certified check or money order. If any check for the security deposit or the first month's rent is returned for insufficient funds, Landlord may declare this rental agreement void and immediately terminated.
9. **RENEWAL TERMS:** With thirty (30) days written notice, as defined in Paragraph 18, either party may terminate this agreement at the end of the initial term, but if no notice is given, then the agreement will be extended on a month-to-month basis on the same terms and conditions contained in this agreement. Thirty (30) days written notice by either party is required prior to termination during such month-to-month term.
10. **SUBLEASE:** Tenant shall not assign or sublet said premises, or any part thereof without the written consent of Landlord. Tenant must have written permission from Landlord for guests to occupy the premises for more than 30 days.
11. **UTILITIES AND SERVICES:** Tenant agrees to pay for utilities and services except: trash/recycling services which will be paid by Landlord. In the event of Tenant default on payment of utilities Landlord may pay and charge Tenant as additional rent together with any penalties, charges and interest. Tenant shall be liable for any inspections required by local authorities/utility companies due to Tenant's failure to obtain service at time of occupancy or to maintain said service during the term of this agreement. Tenant shall pay all costs of hook-ups and connection fees and security deposits in connection with providing utilities to premises during the term of the Lease.
12. **TENANT OBLIGATIONS:** Tenant agrees to keep the dwelling unit and all parts of the premises that he leases safe and clean. In the case of a single-family house or duplex, Tenant shall keep the yard mowed, watered and free of fire ants, keep the roof and gutters free of debris, the shrubs neatly trimmed, and landscaping maintained. Tenant agrees to be responsible for removal of Tenant's contagious and other hazardous materials. Tenant agrees to comply with the lease and rules and regulations the Landlord may adopt concerning the Tenants' use and occupancy of the premises;
- Tenant, or any member of Tenant's family, guest or other person under the Tenant's control, shall conduct themselves in a manner that will not disturb other Tenants' and neighbors' peaceful enjoyment of the premises. Tenant, or any member of Tenant's family, guest or other person under the Tenant's control, shall not engage in or facilitate criminal or drug related activities. Any such violation constitutes a substantial violation of the Lease and a material noncompliance with the Lease and is grounds for termination of tenancy and eviction from the premises.
- It is specifically understood that Tenant will, at Tenant's expense, keep sinks, lavatories, and commodes open, reporting any initial problem within five (5) days of occupancy, repair any and all damages caused by tenancy and replace any burned out light bulbs. Tenant agrees to report to Landlord any malfunction of or damage to electrical, plumbing, HVAC systems, smoke detectors, and any occurrence that may cause damage to the property. Tenant also agrees to pay for the cost of all repairs made necessary by negligence or careless use of the premises and pay for repairs/loss resulting from theft, malicious mischief or vandalism by Tenant and their guests. Tenant agrees to provide copies to Landlord of any inspection reports or repair estimates that Tenant may obtain.
- Tenant agrees to be responsible for and to make at Tenant's expense all routine maintenance, including but not limited to, stoppage of sewer because of misuse or broken water pipes/fixtures due to neglect or carelessness of Tenant. No repairs, alterations or changes in or to said premises or the fixtures or appliances contained therein, shall be made except after written consent of Landlord, and shall be the responsibility of the Tenant for the cost of restoring said premises to their original condition if Tenant makes any such unauthorized modifications. **NO REPAIR COSTS SHALL BE DEDUCTED FROM RENT BY TENANT.** All improvements made by Tenant to the said premises shall become the property of the Landlord. Locks/Deadbolts shall not be changed without the expressed permission of the Landlord.

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APPENDIX 118

Tenant is directly responsible for any damage caused by Tenant's appliances and/or furniture. Tenant is responsible for changing HVAC filters, reporting any water leaks, lighting pilot lights, checking for tripped breakers, changing smoke detector batteries and minor housekeeping repairs. Tenants will be held liable for damage to HVAC systems caused by dirty or missing filters and damages resulting from unreported problems.

Tenant acknowledges that Tenant has inspected the premises and agrees that the premises and any common areas are safe, fit and habitable condition. Tenant acknowledges receipt of instructions of smoke detector operation.

13. **MAINTENANCE OF PREMISES, PEST CONTROL:** Landlord agrees to make repairs and do what is necessary to keep the premises in a fit and habitable condition as specified in South Carolina Residential Landlord and Tenant Act. The Landlord further agrees to maintain in reasonably good and safe working condition, all electrical, gas, plumbing, sanitary, HVAC, smoke detectors and other facilities supplied by him. Landlord is not responsible for changing batteries in smoke detectors.

Tenant shall report any pest problem within three (3) days of possession. Tenant's failure to identify any pest infestation with said three (3) days shall constitute Tenant's agreement that premises has no infestation of any kind. Tenant is responsible for reporting any suspected or known termite infestation but is not responsible for termite control. Any future infestation of any kind, less termites, shall be the responsibility of ☒ Tenant ☐ Landlord.

14. **ESSENTIAL SERVICES AND APPLIANCES:** The Landlord is required to provide essential services; meaning sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the Tenant and supplied by a direct public utility connection. The following appliances present in the dwelling unit are specifically included by this rental agreement as being deemed to be supplied by the Landlord: ☒ stove, ☒ refrigerator, ☒ dishwasher, ☒ disposal, ☒ washer, ☒ dryer, ☒ microwave, ☐ trash compactor, ☐ other: _____

15. **INSURANCE:** Tenant shall be responsible for insuring his/her own possessions against fire and other catastrophes. Landlord and Tenant hereby release each other from liability for loss or damage occurring on or to the leased premises or the premises of which they are a part of the contents of either thereof, caused by fire or other hazards ordinarily covered by fire and extended coverage insurance policies and each waives all rights of recovery against the other for such loss or damage. Willful misconduct lawfully attributable to either party, whether in whole or in part a contributing cause of the casualty giving rise to the loss or damage, shall not be excused under the foregoing release and waiver.

16. **RIGHT TO ACCESS:** The Tenant shall not unreasonably withhold consent to the Landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply necessary or agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

The Landlord or Landlord's agent may enter the dwelling unit without consent of the Tenant:

(a) At any time in case of emergency, including but not limited to prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency; and

(b) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect, or pest treatment, and the like, provided that the Landlord announces intent to enter to perform services; and

(c) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the Tenant and that prior to entering the Landlord announces intent to enter to perform services.

The Landlord shall not abuse the right of access or use it to harass the Tenant. Except for section 16(a), 16(b), and 16(c), the Landlord shall give the Tenant at least 24 hours notice of intent to enter and may enter only at reasonable times.

The Landlord has no other right of access except: pursuant to court order, as permitted by the South Carolina Residential Landlord and Tenant Act when accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings, or unless the Tenant has abandoned or surrendered the premises.

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17. **MILITARY CLAUSE:** If the Tenant is a member of the Armed Forces of the United States, stationed in the N/A area, and shall receive permanent change of station orders out of the N/A area, Tenant may, upon presentation of a copy of said orders of transfer to the Landlord, along with thirty (30) days written notice of intent to vacate and payment of all rent to the expiration date of such written notice, and any miscellaneous charges in arrears, terminate this Rental Agreement. Normal enlistment termination or other type discharge from Armed Forces, unless due to conditions beyond the service member's control, or acceptance of government quarters is not a permanent change of station and is not justification for lease termination. Withholding knowledge of pending transfer or discharge at time of entry into this Rental Agreement voids any consideration or protection offered by this section.
18. **DEFINITION OF "THIRTY (30) DAY NOTICE":** Any written notice given by either party to the other party in order to meet a thirty (30) day notice requirement will be deemed given, and the thirty (30) days deemed to commence on the first day of the calendar month following the date of receipt of said notice. Any termination permitted by other sections contingent upon a thirty (30) day notice will then be effective on the last day of the calendar month following receipt of said notice. If expiration date of lease is not on the last day of the calendar month, then thirty (30) days notice is required to conform to the expiration dates.
19. **DESTRUCTION OR DAMAGE TO PREMISES:** If the dwelling unit or premises are damaged or destroyed by fire or casualty to the extent that normal use and occupancy of the dwelling unit is substantially impaired, the Tenant may immediately vacate the premises and notify the Landlord in writing within seven days thereafter of Tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the Tenant's liability for rent is reduced in proportion to the diminution in the fair-market rental value of the dwelling unit. If the rental agreement is terminated, the Landlord shall return the security deposit and all prepaid rent. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty.
20. **CONDEMNATION:** Tenant hereby waives any injury, loss or damage, or claim therefore against Landlord resulting from any exercise of a power of eminent domain of all or any part of the rented premises or surrounding grounds of which they are a part. All awards of the condemning authority for the taking of land, parking areas, or buildings shall belong exclusively to the Landlord. In the event substantially all of the rented premises shall be taken, this Rental Agreement shall terminate as of the date the right to possession vested in the condemning authority and rent shall be apportioned as of that date. In the event any part of the property and/or building or buildings of which the rented premises are a part (whether or not the rented premises shall be affected) shall be taken as a result of the exercise of a power of eminent domain, and the remainder shall not, in the opinion of the Landlord, constitute an economically feasible operating unit, Landlord may, by written notice to Tenant given within sixty (60) days after the date of taking, terminate this Rental Agreement as of a date set out in the notice not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of termination date.
21. **ABSENCE, NON-USE AND ABANDONMENT:** The unexplained absence of a Tenant from a dwelling unit for a period of 15 days after default in the payment of rent must be construed as abandonment of the dwelling unit. If the Tenant abandons the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy, subject to the other Landlord's remedies. If the Landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the Landlord accepts the abandonment as a surrender, the rental agreement is considered to be terminated by the Landlord as of the date the Landlord has notice of the abandonment. When a dwelling unit has been abandoned or the rental agreement has come to an end and the Tenant has removed a substantial portion of personal property or voluntarily and permanently terminated the utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of \$500 or less, the Landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.
22. **SECURITY DEPOSIT:** Tenant agrees to deposit with Landlord a security deposit of \$1200 to be held as security for the full and faithful performance by the Tenant of all terms and conditions herein, it being understood and agreed to that no part of this deposit is to be applied to any rent which may become due under this rental agreement. Upon termination of the tenancy, property or money held by the Landlord as security may be applied to the payment of accrued rent and the amount of loss of rents or damages which the Landlord has suffered by reason of the Tenant's noncompliance with the South Carolina Residential Landlord and Tenant Act. Any deduction from the security deposit must be itemized by the Landlord in a written notice of the Tenant together with the amount due, if any, within 30 days after termination of the tenancy and delivery of possession and demand by the Tenant, whichever is later. The Tenant shall provide the Landlord in writing with a form which the written notice and amount due from the Landlord may be sent.
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If the Tenant fails to provide the Landlord with the forwarding or new address and fails to return the following:

☐ pool tags, ☐ keys for mail box, ☒ keys to unit (including deadbolt, storage area), ☐ other N/A.
the Tenant is not entitled to damages under this subsection provided the Landlord (1) had no notice of the Tenant's whereabouts; and, (2) mailed the written notice and amount due, if any, to the Tenant's last known address. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within five (5) business days after receiving notice from the Landlord.

23. **NONCOMPLIANCE WITH RENTAL AGREEMENT OR FAILURE TO PAY RENT:** If there is a noncompliance by the Tenant with the rental agreement other than nonpayment of rent or a noncompliance with Paragraph 12 above, the Landlord may deliver a written notice to the Tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice, if the breach is not remedied in 14 days.

The rental agreement shall terminate as provided in the notice except that: If the breach is remediable by repairs or otherwise and the Tenant adequately remedies the breach before the date specified in the notice, or if such remedy cannot be completed within 14 days, but is commenced within the 14-day period and is pursued in good faith to completion within a reasonable time, the rental agreement shall not terminate by reason of the breach.

If rent is unpaid when due and the Tenant fails to pay rent within five days from the date due, the Landlord may terminate the rental agreement provided the Landlord has given the Tenant written notice of nonpayment and Landlord's intention to terminate the rental agreement. If the rent is not paid within that period, said notice is contained herein Paragraph 5.

The Landlord may recover actual damages and obtain injunctive relief in magistrate's or circuit court without posting bond for any noncompliance by the Tenant with the rental agreement or Paragraph 12 above. If the Tenant's noncompliance is willful other than nonpayment of rent, the Landlord may recover reasonable attorney's fees. If the Tenant's nonpayment of rent is not in good faith, the Landlord is entitled to reasonable attorney's fees.

If there is noncompliance by the Tenant with Paragraph 12 above, materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord specifying the breach and requesting that the Tenant remedy it within that period of time, the Landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and shall in addition have the remedies available under the South Carolina Residential Landlord Tenant Act.

If there is noncompliance by the Tenant with Paragraph 12 above materially affecting health and safety other than as set forth in the preceding paragraph, and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord if it is not an emergency, specifying the breach and requesting that the Tenant remedy within that period of time, the Landlord may terminate the rental agreement. If the rental agreement is terminated, the Landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees. Any claim not satisfied by Tenant may be turned in to the credit bureau or collection agency.

24. **REMEDY AFTER TERMINATION:** If the rental agreement is terminated, the Landlord has a right to possession, for rent, and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees, collection costs, and court costs.
25. **NOTICE:** A Landlord receives notice when it is delivered at the place of business of the Landlord through which the rental agreement was made or at any place held out by Landlord as the place of receipt of the communication.
26. **PROHIBITIVE EQUIPMENT/FURNITURE:** Tenant agrees not to place antennas, satellite dishes, waterbeds, and auxiliary heaters without written permission from Landlord.
27. **INVENTORY:** Any furnishing and equipment to be furnished by Landlord shall be set out in a special inventory. The inventory shall be signed by both Tenant and Landlord concurrently with this Rental Agreement and shall be a part of this Agreement.

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28. **PETS:** Tenant shall not keep domestic or other animals on or about the premises without the PRIOR WRITTEN CONSENT of the Landlord. Landlord, at Landlord's sole discretion, may consent if Tenant makes the following payments: (1) a non-refundable deposit of \$N/A and (2) rent for the pet(s) in the total amount of \$N/A, for the term of this agreement. Tenant shall be responsible for the animal, its behavior, and any damage done by the animal. The Landlord shall have the right to withdraw consent and demand removal of any previously permitted animal upon the first complaint registered against such animal or upon evidence of injury or damage to person or property caused by the animal.
29. **WAIVER:** A Tenant is considered to have waived violation of a Landlord's duty to maintain the premises as set forth by the Rental Agreement or violation of the Landlord's duties under the South Carolina Residential Landlord and Tenant Act, as defense in an action for possession based upon nonpayment of rent, or in an action for rent concerning a period where the Landlord has no notice of the violation of the duties, fourteen (14) days before rent is due for violations involving services other than essential services, or the Landlord has no notice before rent is due which provides a reasonable opportunity to make emergency repairs necessary for the provision of essential services. No modification, change, or cancellation hereof shall be valid unless in writing and executed by all parties hereto. No representation or promise has been made by either party hereto except as herein stated.
30. **PEACEFUL ENJOYMENT:** The Landlord covenants that the Tenant, on paying the rent and performing the covenants hereof, shall and may peaceably and quietly have, hold, and enjoy the rented premises for the term mentioned without hindrance or interruption by the Landlord.
31. **PROVISIONS:** The provisions of this Rental Agreement shall be binding upon and inure to the benefit of the Landlord and the Tenant, and their respective successors, legal representatives, and assigns.
32. **SUBORDINATION:** Tenant's rights are subject to any bona fide mortgage which now covers said premises and which may hereafter be placed on said premises by Landlord. Tenant shall upon request by Landlord execute a subordination of its rights under this Rental Agreement to any mortgage given by Landlord hereunder, whether to secure construction or permanent or other financing. Resident shall upon request by Landlord promptly execute a certification of good standing certifying the terms of this Rental Agreement, its due execution, the rental provisions hereof, or the terms of amendments hereto, if any, and any other information reasonably requested.
33. **RENTAL RATE ADJUSTMENT:** On and after the expiration of the initial term of this lease, the Landlord, at Landlord's discretion, may alter the rental rate in effect provided only that written notice of such alteration is delivered as first class mail to the US Postal Service, postage prepaid at least fifteen (15) days prior to the effective date of alteration.
34. **TRUST ACCOUNT INTEREST:** ACCORDING TO THE RULES AND REGULATIONS OF THE SOUTH CAROLINA REAL ESTATE COMMISSION AND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE HAS THE OPTION TO PLACE TENANT'S SECURITY DEPOSIT INTO AN INTEREST BEARING ACCOUNT AND TO RETAIN ALL INTEREST INCURRED IN SAID ACCOUNT. TENANT AGREES TO AND UNDERSTANDS THAT THE TENANT HAS BEEN INFORMED OF TENANT'S RIGHT TO OWNERSHIP OF THE INTEREST BUT RELINQUISHES TO THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE BY THIS WRITTEN AGREEMENT SAID RIGHT OF OWNERSHIP.
35. **RULES AND REGULATIONS:** The common area facilities, if any such as swimming pool, laundry room, recreational, and other common area facilities, when open and operating, are subject to applicable rules and regulations posted by the Landlord. The Tenant agrees to observe faithfully all rules and regulations that the Landlord has now or may hereafter adopt for the use of the premises.
37. **JOINT RESPONSIBILITY:** If this Rental Agreement is executed by more than one (1) Tenant, the responsibility and liabilities herein imposed shall be considered and construed to be joint and several, and the use of the singular shall include the plural.

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APPENDIX 123

36. **LANDLORD'S ADDRESS FOR COMMUNICATIONS:** All notices, requests, and demands unless otherwise stated herein, shall be addressed and sent to:

Mail: _____

Phone: (Home) **803-743-2620**

(Work) **803-312-5631**

38. **CAPTIONS:** Any heading preceding the text of any paragraph hereof is inserted solely for convenience of reference and shall not constitute a part of this Rental Agreement, nor shall they affect its meaning, construction or affect.

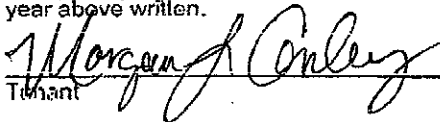
39. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

40. **ADDITIONAL TERMS:** _____

WHEREFORE, the parties have executed this Rental Agreement or caused the same to be executed by their authorized representative, the day and year first above written.

THIS RENTAL AGREEMENT supersedes all prior written or oral agreements and can be amended only through a written agreement signed by both parties. Provisions of this Rental Agreement shall bind and inure to the benefit of the Landlord and to the Tenant and their respective heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have subscribed their names and affixed their seals in duplicate the day and year above written.



Tenant

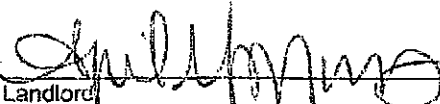
Witness to Tenant

Tenant's Email Address: mconley2010@gmail.com

Tenant

Witness to Tenant

Tenant's Email Address: _____



Landlord

Witness to Landlord

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of any part of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of REALTORS®.

4/22/16

As of this date Morgan Conley
has issued security deposit of \$1200
and agrees to pay \$1200/month
for a year lease. Lease date to
start May 7th 2016.

April Hopkins

Morgan Conley