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Aug 15 2022

SC Court of Appeals

**FORM 15
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 20022CP4600225

Bernard Gill,

Appellant,

v.

Ezekiel Grier,

Respondent.

RECORD ON APPEAL

Bernard Gill
561 Cotton Field Rd.
Rock Hill, South Carolina 29732
(803) 448-5584
Appellant

INDEX

Text Notice November 1, 20211

Letter Notice November 1, 20211

Notice To Quit of December 27, 20211

Text Reply of January 10, 20221

Order of January 12, 20221

Email of January 14, 20221

Order of January 24, 20222

Code of Laws- Title 27- Chapter 402

Witness: Chaka Grier2

Exhibits 1-42

Exhibits 5-113

Exhibits 12-154

Text Notice November 1, 2021

The Respondent was given a text message and a written notice to move out because he was not under lease, rent or contract and was asked to repair all damages to my property.

Notice to Quit December 27, 2021

The Appellant filed a Notice to Quit with the court due to the Respondent filing a false police report after he moved out and left the house abandoned (pictures provided).

Text Reply on January 10, 2022

The Appellant made arrangements for the Respondent to pick up his things as agreed in court on January 6, 2022 to have it done by January 11, 2022. The Respondent didn't show up as stated.

Order of January 12, 2022

Proof that the Respondent and Appellant agreed in court to settle by January 11, 2022 and the Respondent failed to do his part. Proof that the Respondent receive his notice to move, didn't pay in months, states no formal rental agreement with the Respondent; shows no payments of \$1,000.00 paid in months or never by the Respondent. And Respondent files a Unlawful Ouster with no proof.

Email on January 14, 2022

Proof that the Appellant reaches back out to the court to proof the house is still left abandoned and was unlocked because the Respondent damaged the front door as well. No response or help from the court. And was told by the court, they don't have to reply and it could not be used as evidence.

Order of January 24, 2022

With all the proof presented to the court, the court orders the Appellant to pay 3x rent money that was never received (\$3,000.00) and charges the Appellant with Unlawful Ouster with no proof. The Appellant was not given his rights to a jury and was charged without allowing him to present his case.

Code of Laws- Title 27- Chapter 40

According to this Law, there is no proof that the Appellant should be charged with unlawful ouster.

Witness

Ms. Grier witness how the court refused to accept my proof, provide a jury and provides proof that the Respondent have not paid anything.

Exhibit #1

The Respondent punched holes in wall #1.

Exhibit #2

The Respondent punched holes in wall #2

Exhibit #3

The Respondent left bedroom trashed unsafe.

Exhibit #4

The Respondent left bedroom trashed unsafe.

Exhibit #5

The Respondent left mold in the house unsafe.

Exhibit #6

The Respondent left the kitchen trashed and unsafe.

Exhibit # 7

The Respondent left the front steps trashed and unsafe.

Exhibit # 8

The Respondent left the rear steps trashed and unsafe.

Exhibit #9

The Respondent left the rear deck trashed and unsafe.

Exhibit #10

The Respondent left the front yard trashed and unsafe.

Exhibit #11

The Respondent left the back yard trashed and unsafe.

Exhibit #12

The Respondent left the outside of the house mold and unsafe.

Exhibit #13

The Respondent left the bedroom (2) trashed and unsafe.

Exhibit #14

The Respondent left the bedroom (3) trashed and unsafe.

Exhibit #15

The Respondent left the bathroom trashed and unsafe.

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

August 15, 2022

Bernard Gill
561 Cotton Field Rd.
Rock Hill, South Carolina 29732
(803) 448-5584
Appellant

From : 8034485584@vzwpix.com

Subject : <No Subject>

 1 attachment

To : ttcm@comporium.net

Hi Bro. Ezekiel,

I will give you until 1 December 2021 to move. I will keep the power on until then also.

I will get it in a letter in case you need that to help you find a place.

November 1, 2021

Mr. Ezekiel Grier,

This letter is to inform you that you have until December 1, 2021 to move out of 1734 Heatherhill Rd. with all of your belongings.

You are not under a lease, rent or contract agreement with this property, but if you can repair any damages it would be appreciated.

Sincerely,


Bernard Gill

Owner

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
)

3925
CIVIL CASE NUMBER
IN THE MAGISTRATE COURT

BERNARD GILL 803-448-5584
Plaintiff(s)

vs.

LEEKIAL GRICE

AFFIDAVIT AND APPLICATION
FOR NOTICE TO QUIT PREMISES

COPY

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DEC 27 2021

Defendant(s)

BERNARD GILL

I, BERNARD GILL Plaintiff do swear and affirm that I am the owner of the premises located within the jurisdiction of Catawba/Ebenezer Magistrate, which are further described as; (address and description of premises)


1734 Heatherhill Rd Rock Hill, S.C. 29732

I further state that the above Defendant(s) is/are in possession of such premises without my consent or warrant of the law; and, that Defendant(s) has/have refused and neglected to vacate the same, after requested to do so.

-I therefore, apply to the Court, in accordance with S.C. Code of Laws, Section 15-67-610, to serve a notice on such trespasser(s) to quit the premises.

I swear or affirm the above to be true to the best of my knowledge.

Date: 12/27/21


Plaintiff / Plaintiff's Attorney

Sworn and subscribed before me

This 27 day of Dec. 20 21

Notary Public
My Commission Expires: 5-26-23



STATE OF SOUTH CAROLINA

COUNTY OF York

Brennan Gill

PLAINTIFF(S)

VS.

Ezekiel Grimm

DEFENDANT(S)

CIVIL CASE NUMBER: _____

IN THE MAGISTRATE'S COURT

CERTIFICATION OF COMPLIANCE
WITH THE CORONAVIRUS AID, RELIEF,
AND ECONOMIC SECURITY ACT

(Evictions)

COPY

My name is:

Joey
First

(Brennan)
Middle

Gill
Last

I am (check one) the Plaintiff or an authorized agent of the Plaintiff in the eviction case described at the top of this page. I am capable of making this certification. The facts stated in the certification are within my personal knowledge and are true and correct.

1. Verification:

Plaintiff is seeking to recover possession of the following property:

Name of Apartment Complex (if any)

1734 Heatherhill Rd Rock Hill, S.C 29722

Street Address & Unit No. (if any) City County State ZIP

I verify this property is is not a "covered dwelling" as defined by Section 4024(a)(1) of the Coronavirus Aid, Relief, and Economic Security Act. The facts on which I base my conclusion are as follows:

(Please identify which data base or the other information you have used to determine that the property does not have a federally backed mortgage loan or federally backed multifamily mortgage loan.)

Not funded

Is the property a Low Income Housing Tax Credit (LIHTC) property? (check one)

Yes No

Is the property federally subsidized under any HUD program? (check one)

Yes No

Is the property rented to persons with Section 8 vouchers? (check one)

Yes No

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The Plaintiff is is not a multifamily borrower receiving forbearance as described in § 4023(d) of the Coronavirus Aid, Relief, and Economic Stimulus Act.

2. Declaration:

I certify that the foregoing statements made by me are true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

My name is: TERRY (BERNARD) GILL
First Middle Last

My address is: 1734 Heathcreek Rd. Rock Hill SC 29722
Street Address & Unit No. (if any) City State ZIP

Signed on: 12 / 27 / 21 in York County, South Carolina.
Month Day Year

[Signature]
Signature

From : 8034485584@vzwpix.com

Subject : <No Subject>

📎 1 attachment

To : ttcm@comporium.net

Thanks I have more then that to get but will take more then a day. Dre has things to. I will have him down here this afternoon once I pick him up and head back down from Charlotte

This was his reply on 1/10/2022 after we agreed for him to pick-up his Equipment by 1/11/2022 in Court.

Plaintiff Gill filed a Notice to Quit³⁴ on December 27, 2021, however it was not served on the Defendant until January 6, 2022. Plaintiff Gill testified that he "boarded up the house" thus denying access to Defendant Grier after unsuccessfully trying to contact Defendant Grier and further that Plaintiff Gill believed the property to be "abandoned". Defendant Grier did provide a police report to the court which indicated that the house was boarded up and he was denied access on December 23, 2021.

Thereafter, Defendant Grier filed an Unlawful Ouster action on January 3, 2022, as the Plaintiff.

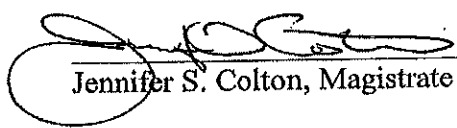
The court finds the following:

A Landlord Tenant relationship exists between the Plaintiff/Defendant. The court finds that Defendant Gill is lawfully a tenant with a possession interest in the property, and hereby dismisses the Notice to Quit. The Notice to Quit action was filed but not served prior to the Unlawful Ouster action, despite not being served until after the Unlawful Ouster action was initiated. The Plaintiff Gill did attempt to initiate eviction proceedings and attempt to comply with providing 30 days written notice to the Defendant Gill. The court further finds that the conduct of the Plaintiff does not meet the elements of retribution conduct and makes no further findings as to those damages because the notice to quit was filed *after* the Unlawful Ouster action. Further, the Unlawful Ouster occurred on December 23, 2021 (filed on January 3, 2022) after written notice to terminate the lease was provided to Defendant Grier.

The court finds that Defendant Gill's conduct constitutes an Unlawful Ouster and orders that the immediate possession of the property, located at 1734 Heatherhill Road, Rock Hill, South Carolina, be returned to Plaintiff Grier.

IT IS SO ORDERED.

January 12, 2022


Jennifer S. Colton, Magistrate

Zimbra

ttdcm@comporium.net

Issues

From : Ministry Taking the city <ttdcm@comporium.net>

Fri, Jan 14, 2022 09:56 AM

Subject : Issues

📎 3 attachments

To : marcus herbert <marcus.herbert@yorkcountygov.com>

Hi Mr. Herbert,

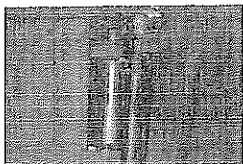
This is Bernard Gill, I came to court with Ezekiel Grier. Can you relay this message to the judge:

She said he had to have access to my house: this guy just tell lies. He agreed in a court room to have his things out by the 11th of January. I contacted him on the 10th because he never showed up. I will send the conversation.

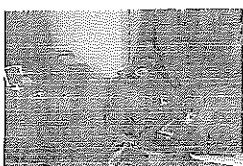
1. He comes back to court and accuse me of having it boarded up , but made no attempt to get his items.
2. The Judge says he must have immediate access to my house; I replaced the broken lock and had to leave my house unlocked for him; according to the judge.
3. He have made no attempt to get his equipment which he stated in court out- pictures attached. Neither does he stay in my house he is playing the system.
4. Now my house is being left unlocked and someone has broke my rear gate- pics attached.
5. I owe the furniture; new washer and dryer; refrigerator and etc. because it's my house; if those things come up missing; who is responsible for replacing it.
6. I have provided pictures and we are heading into a weekend; I have no problem with him getting his things, but I need my door locked and he can make arrangements to get his items.
7. It's a shame that I own a house; pays for it, and someone that admits they haven't paid thinks they have a right- This is not justice.

Can I lock my front door? Someone call me today please.

Bernard Gill
803-448-5584

**Fence Broke.jpeg**

444 KB

**Equipment left II.jpeg**

966 KB

Equipment left.jpeg

956 KB

Grier on, about, or prior to December 1, 2021 of his intent to evict and/or terminate the lease. The letter providing notice to Tenant Grier was acknowledged by Tenant Grier as having been received. The court finds as a matter of law that the term of the lease is the Statutory Default of a "month to month" lease, as provided in SC Code Ann. Section 27-40-310. The amount of rent is \$1000 USD. The court further finds that rent was not paid directly by Tenant Grier for the months of September, October, November, and December (and presumably January) as testified to by Landlord Gill and conceded by the Tenant Grier in that 'his wife deals with her father and he just gives her the money' (paraphrased).

Out on
1 DEC. 2021

SAFETY & INSURANCE ABANDONED

Landlord Gill testified that he "boarded up the house" thus denying access to Tenant Grier after unsuccessfully trying to contact Tenant Grier. Landlord Gill testified that he drove past the house several times since posting the notice on the Tenant's door and that the Tenant's car had been 'removed'. Landlord Gill also testified that he believed the property to be "abandoned". Tenant Grier admitted into evidence a police report which indicated that the house was boarded up and he was denied access as of December 23, 2021. Tenant Grier testified that he continuously occupied the rental property until access was denied and had personal items in the residence. Landlord Gill did not file an eviction action due to the property being abandoned.

The court ordered on January 11, 2022 that the actions by Landlord Gill constituted an unlawful ouster, finding for the Tenant Grier. The court on the record misinterpreted the law by failing to award damages to Tenant Grier pursuant to S.C. Code Ann. Section 27-40-660. The court did have both parties return to court to be heard on the 'Second' Unlawful Ouster action on January 20th, 2022. Landlord Gill testified that he had complied with the order for immediate possession because the door to the apartment was now unlocked and Tenant Grier could take possession of the property whenever he wanted to. The court *specifically* asked Landlord Gill as to how Tenant Grier was notified that his access to the property was now unobstructed. Landlord Gill admitted that he provided Tenant Grier with no affirmative indication that the door had been unlocked nor provided a key. The court finds that Landlord Gill did not comply with the court order transferring possession as no notice that the Tenant could take possession was even attempted, let alone in any reasonable manner.

23 days
paid Notice

W/keys date
1/11/22 to be out

Court
Order

sent a EMAIL to court Judge replied they don't have to call back & Evidence could not be used

The court *attempted* to assist the parties to facilitate transfer of possession by asking Landlord Grier if he could drop the 'key' off at the Magistrate Clerk's Office and that the Tenant could pick up the key. Landlord Grier testified under oath that he did not have a key and that the door only opened from the inside and that is why the residence was left 'unlocked'. The court ordered transfer of the key to the existing lock, *if it became 'unlost'*, or that Landlord Grier change the locks and provide the new key within 24 hours. (Landlord Gill had asked the court to provide a Sheriff's officer to facilitate the transfer at the residence, and both parties agreed that the arrangement at the Clerk's office was an appropriate alternative). The matter was continued to January 24, 2022 to determine whether Landlord Gill complied with the court's order.

On January 24, 2022, both parties appeared before the court. Tenant Grier testified that he now had access to the property, but that it had no heat and that he was unable reside in the property. The court noted the temperature this morning was 28 degrees. Landlord Gill testified that he was aware that the property had issues with the heating unit, that he had previously tried to fix the heat, and that the heating unit was not functioning. Landlord Gill also admitted that he 'shut off the breaker' when he believed the property was abandoned. Because Tenant Grier was denied access to the property and could not discover the lack of heat (which the court finds would constitute an Unlawful Ouster regardless of the lack of physical access), the court found Landlord Gill to be in continuous violation of the landlord tenant act in that his actions both constructively and actually denied Tenant Grier access to the rental property.

Receipt? The court found that Tenant Grier claimed damages in the amount of \$1050 for hotel rentals and the lack of access to his property. Rent was \$1000 a month. Under SC Code Ann. Section 27-40-600, a tenant may recover Possession of the Property or Terminate the lease and recover the greater of twice actual damages or the three times rent. *NO PAYMENT* Tenant Grier sought recovery of possession of the property. The amount of rent (\$3000) is greater than twice the actual damages.

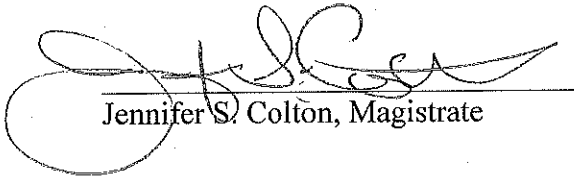
The court order the following:

FEH LIKE IN EVIDENCE, REMOVED BY EVIDENCE

The court finds that Defendant Gill's conduct constitutes continuous Unlawful Ouster and orders that the immediate possession of the property, located at 1734 Heatherhill Road, Rock Hill, South Carolina, be returned to Tenant Grier. The court orders Landlord Gill to provide heat to allow occupancy by Tenant Gill within 24 hours. The court orders a monetary judgment in favor of the Plaintiff/Tenant Gill pursuant to SC Code Ann. Section 27-40-600 in the amount of \$3000 and court costs.

IT IS SO ORDERED.

January 24, 2022


Jennifer S. Colton, Magistrate

- (1) procure reasonable amounts of the required essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or
- (2) recover damages based upon the diminution in the fair-market rental value of the dwelling unit and reasonable attorney's fees.
- (b) If the tenant proceeds under this section, he may not proceed under Section 27-40-610 as to that breach.
- (c) Under no circumstances should this section be interpreted to authorize the tenant to make repairs on the rental property and deduct the cost of the repairs from rent. In the event that the tenant unlawfully acts without the landlord's consent and authorizes repairs, any mechanic's lien arising therefrom shall be unenforceable.
- (d) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant's permission or who is allowed access to the premises by the tenant.

HISTORY: 1986 Act No. 336, Section 1.

SECTION 27-40-640. Landlord's noncompliance as defense to action for possession or rent.

- (a) In an action for possession based upon nonpayment of the rent or in an action for rent concerning a period when the tenant is in possession, the tenant may rely on the rental agreement or the provisions of this chapter to assert defenses and to counterclaim for any amount recoverable thereunder. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover, in addition to actual damages, reasonable attorney's fees.
- (b) Notwithstanding the provisions of subsection (a), 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 Section 27-40-440 as a defense in an action for possession based upon nonpayment of rent or in an action for rent concerning a period where:
- (1) the landlord has no notice of the violation of the duties fourteen days before rent is due for violations of Section 27-40-440 involving services other than essential services; or
- (2) 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.
- (c) In an action for rent concerning a period when the tenant is not in possession, he may assert defenses and counterclaims as provided in subsection (a) but is not required to pay any rent as required by Section 27-40-790.

HISTORY: 1986 Act No. 336, Section 1.

SECTION 27-40-650. Fire or casualty damage.

- (a) 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:
- (1) immediately vacate the premises and notify the landlord in writing within seven days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or
- (2) 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.
- (b) Unless the fire or casualty was due to the tenant's negligence or otherwise caused by the tenant, if the rental agreement is terminated, the landlord shall return security recoverable under Section 27-40-410 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. A landlord may withhold the tenant's security deposit or prepaid rent if the fire or casualty was due to the tenant's negligence or otherwise caused by the tenant; however, if the landlord withholds a security deposit or prepaid rent, he must comply with the notice requirement in Section 27-40-410(a).

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 5.

SECTION 27-40-660. Tenant's remedies for landlord's unlawful ouster or exclusion.

If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under Section 27-40-410.

HISTORY: 1986 Act No. 336, Section 1.

Subarticle II

Landlord Remedies

SECTION 27-40-710. Noncompliance with rental agreement; failure to pay rent; removal of evicted tenant's personal property.

- (A) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement other than nonpayment of rent or a noncompliance with Section 27-40-510 materially affecting health and safety or the physical condition of the property, or Section 27-40-540, 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 fourteen days after receipt of the notice, if the breach is not remedied in fourteen days. The rental agreement terminates as provided in the notice except that:
- (1) if the breach is remediable by repairs or otherwise and the tenant adequately remedies the breach before the date specified in the notice, or
- (2) if the remedy cannot be completed within fourteen days, but is commenced within the fourteen-day period and is pursued in good faith to completion within a reasonable time, the rental agreement may not terminate by reason of the breach.
- (B) If rent is unpaid when due and the tenant fails to pay rent within five days from the date due or the tenant is in violation of Section 27-40-540, the landlord may terminate the rental agreement provided the landlord has given the tenant written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period. The landlord's obligation to provide notice under this section is satisfied for any lease term after the landlord has given one such notice to the tenant or if the notice is contained in conspicuous language in a written rental agreement. The written notice requirement upon the landlord under this subsection shall be considered to have been complied with if the rental agreement contains the following or a substantially equivalent provision:

"IF YOU DO NOT PAY YOUR RENT ON TIME

This is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit."

The presence of this provision in the rental agreement fully satisfies the "written notice" requirement under this subsection and applies to a month-to-month tenancy following the specified lease term in the original rental agreement. If the rental agreement contains the provision set forth in this subsection, the landlord is not required to

Zimbra**ttdm@comporium.net**

Fwd: Payment 1734 Heath.....

Thu, Aug 11, 2022 08:52 AM

From : Chaka Grier <chakagrier@gmail.com>
Subject : Fwd: Payment 1734 Heath.....
To : Ministry Taking the city <ttdm@comporium.net>

----- Forwarded message -----

From: **Chaka Grier** <chakagrier@gmail.com>
Date: Thu, Aug 11, 2022 at 8:46 AM
Subject: Payment 1734 Heath.....
To: Ministry Taking the city <ttdm@comporium.net>

To whom it may concern,

This letter is to ensure that Ezekiel Grier did not pay rent nor utilities of any kind from January 2021- December 2021. He also did not act upon any payment arrangements for his stay. When asked from I (Chaka Grier) to assist with paying rent he replied he was not obligated to do so. If there are any questions or concerns please contact via phone or email. Thank you.

-Chaka Grier
803-650-0922
chakagrier@gmail.com

Exhibit # 1

(Ezekiel Punched Holes In The Wall) Provided to the Court Jan 6, 2022



Exhibit # 2

Provided to the Court
JAN 6, 2022

(EZEKIEL PUNCHED HOLES IN ANOTHER WALL)



Exhibit # 3 - Bedroom Trashed - Provided to The Court Jan 6, 2022



Exhibit #4 Bedroom Trashed - Provided To The Court on Jan. 6, 2022



Exhibit #5 Ceiling Mold (UNSAFE) Provided To The Court JAN. 6, 2022



Exhibit #6 Kitchen Trashed (UNSAFE) Provided To The Court JAN 6, 2022



Exhibit #7 Front Steps (UNSAFE) Provided To The Court JAN 6, 2022

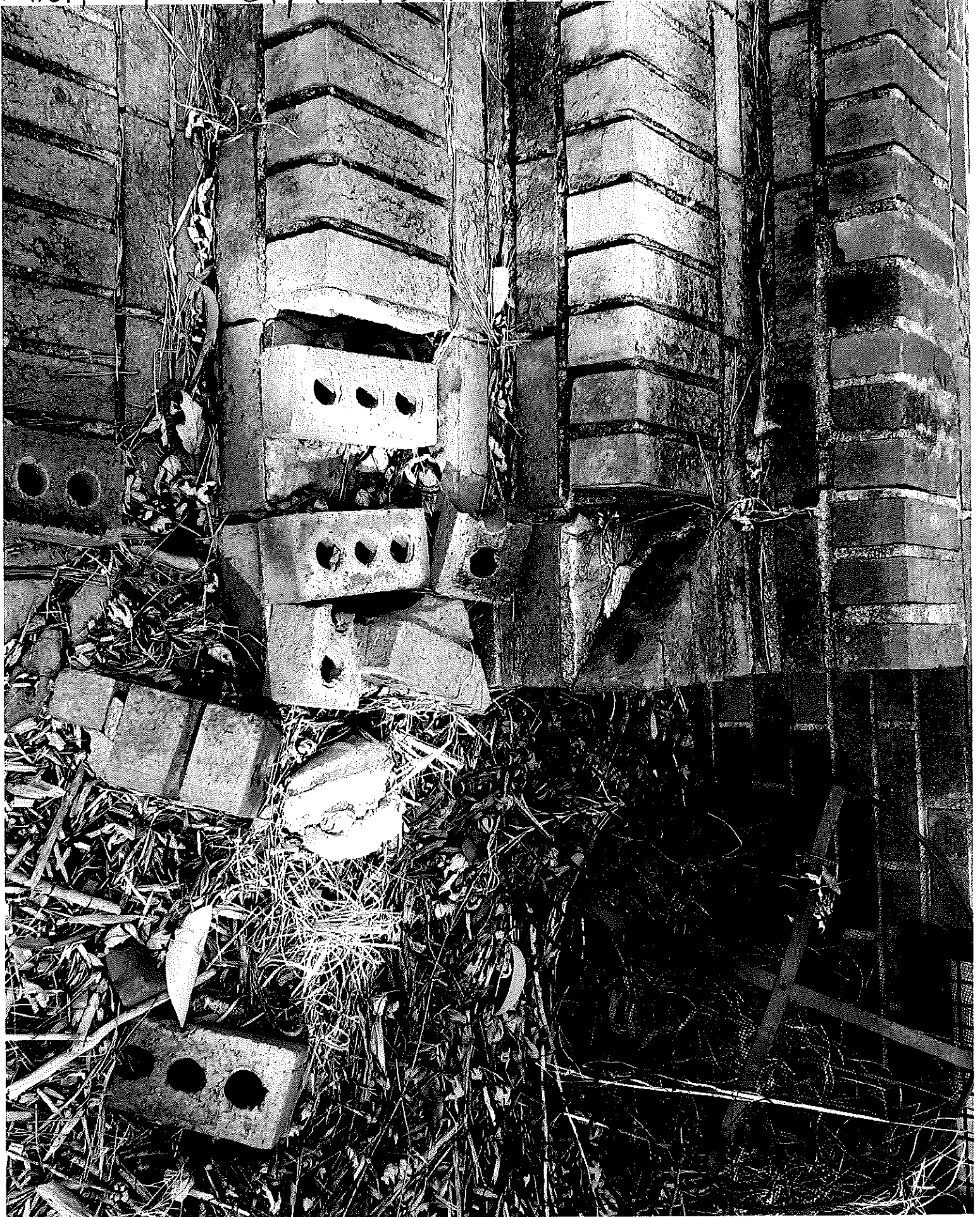


Exhibit #8 Rear Steps (UNSAFE) Provided To The Court JAN 6, 2022



Exhibit #19 Tree Growing To Deck (Unsafe) Provided To Court Jan 6, 2022



Exhibit #10 Front Yard Trashed (Unsafe) Provided to the Court JAN 6, 2022



Exhibit #11 Back Yard Trashed (Unsafe) Provided To The Court JAN 6, 2022



Exhibit #12 House Abandoned (Unsafe) Provided To The Court JAN 6, 2022



Exhibit #13 Bedroom-2 (Trashed) Unsafe - Provided to Court Jan 6, 2022



Exhibit #14 Bedroom (3) Rashed (Unsafe) Provided To Court JAN 6, 2022



Exhibit #15 Bathroom Trashed (UNSAFE) Provided To Court Jan 6, 2022

