STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS C/A No.: 2022-CP-40-05305
George Gallo. Plaintiff, v. Autumnwood Crossing, L.P., and InterMark Management Corporation, Defendants.	**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court for a hearing on the Defendants' Motion for Summary Judgment. Present representing the Plaintiff was Joseph O. Thickens. Damon C. Wlodarczyk was present on behalf of the Defendants. Having reviewed the pleadings, the motion and exhibits, and hearing arguments from counsel, the Court hereby grants Defendants' motion as more fully discussed below.

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRCP; *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 376 (Ct. App. 2006). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000). Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings. *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. *Id.*

This is a premises liability case. The incident occurred at an apartment complex owned by Defendant Autumnwood Crossing, L.P. (hereinafter "Autumnwood") and managed by Defendant Intermark Management Corporation (hereinafter "Intermark"). Plaintiff, a tenant, tripped and fell while walking down a hallway at the complex. The trip was allegedly caused by a ripple or bubble on the carpet.

There was no dispute as to the following facts presented at the hearing, which are also supported by the exhibits. Plaintiff has resided at the complex since approximately 2019, when the complex first opened. Near Plaintiff's apartment, a bubble on the hallway carpet developed.

Plaintiff confirmed in his deposition that prior to his fall, he did not notice the bubble on the carpet. Plaintiff never reported the issue with the bubble on the carpet before his fall. Plaintiff never heard any other tenant complain of the bubble on the carpet. Plaintiff testified he only discovered the bubble after he fell, when he went back to investigate what could have caused him to fall.

Renee Bryant, who was at all times relevant to the property manager for the complex, testified that no one reported any issue with the carpet prior to Plaintiff's fall and she was not aware of the bubble prior to Plaintiff's fall.

Louis Rodriguez, who at all times relevant was the maintenance person at the complex testified he was not aware of the bubble prior to the Plaintiff's fall, and he only made repairs to the area after being notified by management after Plaintiff's fall.

Ms. Nevla Fogle is a resident of the complex and lives two doors down from the Plaintiff. Ms. Fogle testified she was not aware of the bubble prior to the Plaintiff's fall and only became aware of the bubble after Plaintiff showed her the bubble after his fall.

This case is governed by the South Carolina Residential Landlord Tenant Act ("the Act"). The Act, enacted in 1986, was passed "to simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants." S.C. Code. § 27-40-20(b)(1). The Act "requires a landlord to comply with applicable housing codes materially affecting health and safety, and make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition[.]" S.C. Code. § 27-40-440(a)(1)-(2). The Act also requires that a landlord **"**keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition[.]" S.C. Code. § 27-40-440(a)(3).

In *Watson v. Sellers*, the Court of Appeals has held the Act "is designed to abrogate the well-defined and established common law and embark on a course totally divergent from existing precedent in this area as to the duty of the landlord." 299 S.C. 426, 433, 385 S.E.2d 369, 373 (Ct. App. 1989). The exclusive remedy for negligence against a defendant-landlord is under the statute because at common law, a landlord does not owe a tenant any duty to maintain the premises in a safe condition *Young*. *See also Clea v. Odom*, 394 S.C. 175, 182, 714 S.E.2d 542, 546 (2011) (holding that the Act arrogated the common law which held a landlord *can not* be liable for injuries inflicted upon an invitee or licensee of a tenant where the attack occurs in the common area of an apartment complex).

The Act mentions the delivery of "a written notice to the landlord specifying the acts and omissions constituting the breach." S.C. Code § 27–40–610(a). Also, the Act provides a tenant's rights "do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time." S.C. Code § 27–40–630(d). As a result, this Court has held the Act creates a cause of action for a tenant of residential property against the landlord, "for failure, after notice, to

make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition." *Robinson v. Code*, 384 S.C. 582, 586, 682 S.E.2d 495, 497 (Ct. App. 2009).

To bring a claim under the Act, the Court has found a tenant must give "written notice to the landlord specifying the acts and omissions constituting the breach and failure of the landlord to make the necessary repairs after notice." *Code*, 384 S.C. at 588, 682 S.E.2d at 497-citing S.C. Code Ann. § 27-40-610(a).

The notice requirement–even in cases where the residential unit fails to comply with safety standards–has been applied without exception in South Carolina courts for more than twenty-five years. *Code*, 384 S.C. at 586, 682 S.E.2d at 496 (holding that because tenant failed to notify property owner of the lack of smoke detectors, "they could not state a claim under the SCRLTA"); *Thompson v. CDL Partners LLC*, 378 F. App'x 288, 292 (4th Cir. 2010)(citing decisions handed down by South Carolina Courts in determining that "the South Carolina Supreme would require that a landlord have notice of a defect before being liable to the tenant under the SCRLTA" where a tenant was severely injured after falling when a balcony railing gave way).

Courts have made clear that rights under the Act do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time. Additionally, the Act requires this notice must be given in writing and allow the landlord a reasonable amount of time to repair the allege defect. S.C. Code § 27-40-610.

There is no dispute that Plaintiff did not give the Defendants notice of the bubble on the carpet prior to his fall. Additionally, there is no evidence showing anyone reported an issue with the bubble on the carpet prior to Plaintiff's fall.

Based on the absence of notice of the carpet bubble prior to Plaintiff's fall, his cause of action against the Defendants fails as a matter of law and the Defendants are entitled to judgment in their favor.

IT IS HEREBY ORDERED the Defendants' motion is GRANTED, and this case is forever ended.

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So Ordered

s/ Daniel Coble, 2774