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Dec 16 2024

SC Court of Appeals

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2023-000-630

Jamar Stark and Tyla McNeill, Appellants,

v.

Southern Touch Properties, Respondent.

RECORD ON APPEAL

Jamar Stark
Tyla McNeill
6195 Fish Rd
Dalzell SC 29040
803-229-6401
803-669-3912
Appellants

Richard C. Jones
PO Box 1268
Sumter, SC 29151
Attorney for Respondent

INDEX

2023 Magistrates Return1

2023 Appeal To The Circuit Court Decision4

2023 Judgement (Judge Griffin)7

Proof Of Payment Arrangement8

Landlord Tenant Act (27-40-710).....9

Lease11

Transcript

13.....12

16.....12

18.....12

14.....13

15.....13

22.....13

23.....13

2.....14

3.....14

7.....15

3.....16

7.....16

20.....17

21.....17

22.....17

23.....17

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25.....17

19.....18

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

December 13,2024

Jamar Stark
Tyla McNeill
6195 Fish Rd
Dalzell, SC 29040
(803) 669-3912
(803) 229-6401

R:E Southern Touch Properties

EXHIBIT 5

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
)
Jamar Stark and Tyla McNeill,)
Appellants,)
 v.)
)
Southern Touch Property)
Management,)
)
Respondent.)
)
)
_____)

COURT OF COMMON PLEAS
C/A No. 2023-CP-43-148

MAGISTRATE'S RETURN

RECORDED
2023 MAR 24 A 8:51
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

On February 2, 2023, I conducted an eviction hearing involving the appellants, Jamar Stark and Tyla McNeill, and respondent Southern Touch Property Management. After swearing in the witnesses, I first took testimony from Southern Touch's non-lawyer representative, Sean Schneider. Schneider testified that the eviction was based solely on nonpayment of rent and presented the court a ledger outlining prior payments and any late fees assessed against the defendant. As of the hearing date, the amount owed was eight hundred sixty dollars. The ledger presented to the court is attached to this return and incorporated herein by reference. When asked by me if any further testimony would be provided, Schneider also testified that February rent was due on the fifth of the month pursuant to the rental agreement. No further testimony was given by the plaintiff before resting its case.

The court then took testimony from Jamar Stark. Stark acknowledged that the rent was owed and unpaid, and that the reason the rent was late was due to financial and medical

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EXHIBIT 5

hardships he and his family had endured. He testified that he notified Southern Touch's secretary that the rent would be late. Further, he testified that he had the funds available to pay Southern Touch for the past due rent and for February, but they refused to accept it. Stark further alleged that the matter was personal in that Southern Touch just did not want them there anymore, and they had appeared in this court on prior hearings with Southern Touch. Stark further stated that there were air conditioning issues with the residence and that Southern Touch refused to fix those issues. He even stated he had a video of the Southern Touch stating that they would not fix anything, although it was not presented to the court for review. He further expressed concern that because Southern Touch had filed several evictions against them that it would be impossible for them to find another residence to rent. He stated that "there was no one here to protect us" from Southern Touch's conduct, and expressed concern they would be homeless if convicted. He also referenced a prior hearing with Judge Gamble in which Judge Gamble apparently dismissed the case. In reply, Southern Touch denied any retaliatory conduct. After giving both parties all opportunities to testify or present evidence, I proceeded with my ruling.


In granting the eviction in favor of Southern Touch, I went to some length to explain to the parties that the court could not act as an advocate for any of the parties in the case, and could not advance legal arguments or claims for either party. I further stated that my ruling would be based solely on the testimony and evidence presented and could not consider the prior filings. When the defendants filed their answer to the eviction, no counterclaim was filed against Southern Touch. There was no pleading of any of the tenant's remedies as

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EXHIBIT 5

outlined in the South Carolina Residential Landlord and Tenant Act which may have been applicable in the case. If they had retained counsel, legal arguments would have been made which may have changed the outcome of the case if proven. Because there was a past due rental arrearage exceeding five days, I ruled that Southern Touch could legally evict the defendants. Candidly speaking, this was a difficult case in which to rule as it was apparent to me that both parties would have been well served to have had legal representation. After the eviction was granted, the defendants have posted bond as required by previous court order.

Respectfully Submitted,



B. Keith Griffin
Summary Court Judge
County of Sumter

March 13, 2023

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③

STATE OF SOUTH CAROLINA
COUNTY OF Sumter
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

SC Court of Appeals

CASE NO. 2023CP4300148

Jamar Stark et al
PLAINTIFF(S)

Southern Touch Properties
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Appellants have failed to meet their burden of showing that the lower court made an error of law. The lease provides that payment is due on the 1st of each month. Appellant argues they should have had until the 10th of the month to pay rent before Landlord could file for eviction. This court disagrees. Under S.C. Code Ann. § 27-40-710(B), 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 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 Landlord had given the tenant notice on multiple occasions previously when rent has been past due.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/18/2023 .

Tyla McNeill for Tyla McNeill
 Tyla McNeill for Tyla McNeill
 Jamar Stark for Jamar Stark
 Southern Touch Properties for Southern Touch Properties
 Southern Touch Properties for Southern Touch Properties
 Jamar Stark for Jamar Stark
 Judge Keith Griffin

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

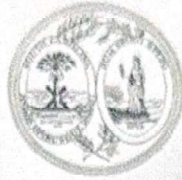
4

ELECTRONICALLY FILED - 2023 Apr 18 2:55 PM - SUMTER - COMMON PLEAS - CASE#2023CP4300148

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.





Sumter Common Pleas

Case Caption: Jamar Stark , plaintiff, et al VS Southern Touch Properties
Case Number: 2023CP4300148
Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2023-04-18 13:40:06 page 3 of 3

ELECTRONICALLY FILED - 2023 Apr 18 2:55 PM - SUMTER - COMMON PLEAS - CASE#2023CP4300148

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EXHIBIT 5

RECEIVED

IN THE SUMMARY COURT

Dec 16 2024 CASE NO. 2023CV4310100193

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

SC Court of Appeals
100 EAST CANAL STREET
SUMTER, SOUTH CAROLINA 29150

Southern Touch Property
Management

VS

Tamar Stark
Tyler McNeil

PLAINTIFF

DEFENDANT

JUDGMENT

PLAINTIFF 9 DID NOT APPEAR IN COURT.
DEFENDANT 9 DID NOT APPEAR IN COURT.

()
()

THE ISSUES IN THIS ACTION WERE TRIED IN THE SUMMARY COURT

BEFORE JUDGE Giffin ON 2/2/2023 20 23;

AT WHICH TIME, A VERDICT FOR THE PLAINTIFF / DEFENDANT WAS RENDERED AS
STATED BELOW:

- () \$ _____ IN ADDITION TO COURT COST OF \$ _____.
- () \$ _____ TO INCLUDE COURT COSTS.
- () OTHER RELIEF AS STATED BELOW:

Ejection granted. Rent has gotten behind to the point
where lease allows for termination. Court will sign writ
of 5 days in accordance with South Carolina Residential
Landlord and Tenant Act.

AND IT IS SO ORDERED!

2/2/2023
DATE

[Signature]
SUMMARY COURT JUDGE

7



+1 (843) 467-9844 >

Hey, as discussed yesterday, We are trying to pay the remaining rent for this month but we cant get into the portal

We actually decided to file the eviction already, we will not be accepting rent at this time

when we spoke yesterday you told us it would be "absolutely fine" for us to pay the rest today, we have it, now you wont accept it?

Yes I understand that but in this case we just decided to file eviction instead

Tue, Jan 10 at 2:32 PM

You never even gave us notice, how can you just file eviction with no notice, and telling us on the day we are set to pay rent that you will not accept it?

We will not be accepting the rent at this time. Eviction has been filed.



iMessage



Cash



(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 27-40-540. 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



furnish any separate or additional written notice to the tenant in order to commence eviction proceedings for nonpayment of rent even after the original term of the rental agreement has expired.

(C) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief, judgments, or evictions in magistrate's or circuit court without posting bond for any noncompliance by the tenant with the rental agreement or Section 27-40-510. A real estate broker-in-charge licensed in this State or a licensed property manager, in the conduct of his licensed business may, either in person or through one or more regular employees, complete a form writ of eviction and present facts to judicial officers on behalf of his landlord/principal in support of an action for eviction and/or distress and/or abandonment for which no separate charge is made for this service. If the tenant's noncompliance is wilful other than nonpayment of rent, the landlord may recover reasonable attorney's fees, provided the landlord is represented by an attorney. If the tenant's nonpayment of rent is not in good faith, the landlord is entitled to reasonable attorney's fees, provided the landlord is represented by an attorney.

(D) Personal property belonging to a tenant removed from a premises as a result of an eviction proceeding under this chapter which is placed on a public street or highway shall be removed by the appropriate municipal or county officials after a period of forty-eight hours, excluding Saturdays, Sundays, and holidays, and may also be removed by these officials in the normal course of debris or trash collection before or after a period of forty-eight hours. If the premises is located in a municipality or county that does not collect trash or debris from the public highways, then after a period of forty-eight hours, the landlord may remove the personal property from the premises and dispose of it in the manner that trash or debris is normally disposed of in such municipalities or counties. The notice of eviction must clearly inform the tenant of the provisions of this section. The municipality or county and the appropriate officials or employees thereof have no liability in regard to the tenant if he is not informed in the notice of eviction of the provisions of this section.

HISTORY: 1986 Act No. 336, Section 1; 1992 Act No. 484, Section 1; 1998 Act No. 362, Section 2; 1999 Act No. 59, Section 1.

SECTION 27-40-720. Noncompliance affecting health and safety.

(a) If there is noncompliance by the tenant with Section 27-40-510 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 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 the tenant shall reimburse the landlord for the cost and, in addition, the landlord shall have the remedies available under this chapter.

(b) If there is noncompliance by the tenant with Section 27-40-510 materially affecting health and safety other than as set forth in subsection (a) above, and the tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen 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.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 6.

SECTION 27-40-730. Remedies for absence, nonuse, and abandonment.

(a) The unexplained absence of a tenant from a dwelling unit for a period of fifteen days after default in the payment of rent must be construed as abandonment of the dwelling unit.

(b) If the tenant has voluntarily terminated the utilities and there is an unexplained absence of a tenant after default in payment of rent, abandonment is considered immediate and the fifteen day rule as described in (a) does not apply.

(c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents 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 landlord's remedies under Section 27-40-740. 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. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is considered to be a month or a week, as the case may be.

(d) 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 his property or voluntarily and permanently terminated his utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of five hundred dollars or less, the landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.

(e) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has left personal property in the dwelling unit or on the premises in the cases not covered by subsection (d) above, the landlord may have the property removed only pursuant to the provisions of Sections 27-37-10 to 27-37-150.

(f) Where property is disposed of by the landlord pursuant to subsection (d) and the property was in excess of five hundred dollars, the landlord is not liable unless the landlord was grossly negligent.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 7.

SECTION 27-40-740. Landlord's lien; distress proceeding.

(a) A contractual lien or contractual security interest on behalf of the landlord in the tenant's household goods is not enforceable unless perfected before the effective date of this chapter.

(b) A landlord may enforce collection of rent by distress only pursuant to Chapter 39, Title 27; however, the tenant may raise defenses to the issuance of a distress warrant pursuant to the provisions of this chapter or the rental agreement and may take advantage of the property exemptions found in Section 15-41-30.

HISTORY: 1986 Act No. 336, Section 1.

Code Commissioner's Note

At the direction of the Code Commissioner, the reference was changed from Section 15-41-200 to Section 15-41-30 because Act 415 of 1988 renumbered Section 15-41-200 to 15-41-30.

SECTION 27-40-750. Remedy after termination.

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.

HISTORY: 1986 Act No. 336, Section 1.

SECTION 27-40-760. Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including wilful diminution of required essential services to the tenant by interrupting or causing the interruption of services, except in case of abandonment, surrender, termination, or as permitted in this chapter.

HISTORY: 1986 Act No. 336, Section 1.

SECTION 27-40-770. Periodic tenancy; holdover remedies.

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven days before the termination date specified in the

1 we had with Southern Touch Properties, they were notified that
2 the rent would be late in November. We told them -- it was in
3 late November we told them November that December and January
4 would be late.

5 At that time my mother passed away in November. She
6 had the baby three weeks earlier. She was in the hospital with
7 Covid and the baby was in the hospital. We went through a lot.
8 They agreed, which we have right here in a text message the
9 representative Ms. Kristin, and then came the ninth.

10 The ninth we paid them half and we said we'll pay you
11 the other amount which was 750, I believe, with the late fee
12 which was \$50. We told them we would pay them on the 10th.
13 They said okay. The 10th came. We tried to go to the portal to
14 pay it. They locked us out.

15 We texted them and said, hey, what's going on. We
16 tried to pay the other half of the rent. They said, oh, no,
17 we're deciding to go for the eviction. We said, well, one, you
18 didn't give us notice and comment two, we had an agreement.
19 They said, yeah, I know, but we're going to file the eviction.

20 Southern Touch Properties, since we moved here from
21 Pennsylvania about a year, probably a year and a half ago, this
22 has been a nightmare. When we first moved in there the air
23 conditioning had a problem. Our first day here they said that,
24 hey, you've got to get a hotel and we will reimburse you, which
25 we did.



1 Once we did that, a month or two later after we get
2 done unpacking and get everything squared away, we presented
3 them with the bill. They tell us they didn't want to pay the
4 bill, so they said they decided to take us to court for \$150
5 that they claim we owe. The judge, which I can't remember his
6 name, he ruled in our favor and stated that we do not owe them
7 the amount and ever since then they've been head hunting for us.

8 Anything that goes wrong, they won't fix nothing in
9 the house and every chance they get they file for eviction.
10 This is like the fourth time they filed for eviction. They lost
11 the eviction several times. The Hon. Judge Griffin granted the
12 eviction. Again, I can't really understand why when we told him
13 we had the payment.

14 His response was they have the right to grant an
15 eviction once you get too far behind. Well, too far behind
16 would have been five days from the date (indiscernible) which
17 would have been the 11th day which would have been the day
18 (indiscernible) filed for eviction.

19 THE COURT: Do you have a copy of the lease so I can
20 take a look at it?

21 MR. STARK: Yes, ma'am. And also while I'm getting
22 this for you, I would like to mention that nowhere in the lease
23 do they have language that speaks if rent was late that they
24 would file for eviction. It's right there.

25 THE COURT: And if you want to go ahead and hand me

1 any text messages you want me to look at.

2 MR. STARK: Okay. And they also did not give us a
3 notice that they were filing an eviction. The day of we were
4 supposed to send in a payment, that's when they decided to --

5 MS. MCNEILL: Yeah, this is when they actually filed
6 the eviction which was on January 10 at 8:50 a.m.

7 MR. STARK: And also when we went to court in the
8 front of the Hon. Judge Griffin, we tried to honor the agreement
9 that we had with him and the rent and plus the rent for February
10 because it was for January, but by the time we got to court the
11 rent was due again. We had both payments and they refused it.

12 And also, if I'm not mistaken, the Hon. Judge Griffin
13 also told them before that if they are trying to pay you rent,
14 do not deny the rent and take the rent, which I think I had that
15 in one of his judgments. I'll look for it. And also -- oh,
16 this is Griffin -- this is one of Griffin's rulings, too.

17 The Hon. Judge Griffin also said in one of his -- in
18 one of these court hearings right here that he told them which -
19 - this is right. He said to comply with the South Carolina code
20 and all of the problems with the house which they had not done.
21 The sink in the bathroom is molding and leaking.

22 When I took it upon myself a year ago to make the
23 repair, they said do not make a repair. You are not authorized
24 to make repairs. So now we're stuck with a bathroom that we
25 cannot use that has mold and (indiscernible) to leaking. The AC

1 wrong.

2 MS. MCNEILL: And they actually could have had the
3 money in January when we tried to uphold our end of the payment
4 arrangement.

5 MR. STARK: But they locked us out of the portal and
6 file for eviction which was four days and eight hours. They did
7 not give us the proper file date to pay the rent. When we tried
8 on the 10th day, we were locked out.

9 MS. MCNEILL: And also you can see from the text
10 message with Ms. Kristin back in December she stated rent was
11 due by the fifth and after that there is a five day grace
12 period.

13 MR. STARK: Which they did not uphold.

14 THE COURT: Let me just take a look at this real
15 quick.

16 MR. STARK: Okay.

17 MS. MCNEILL: Yes, ma'am.

18 THE COURT: Okay. I'm looking at the text messages
19 that you handed to me. So it looks like you had some discussion
20 with them prior to it looks like December 15 I see that your
21 text to them said -- or their text to you said rent is being
22 paid in full tomorrow, correct?

23 And then I see on Friday, December 16, it says we just
24 paid \$1000 and after today we will be able to pay the other 550
25 next week on Wednesday, and then it talks about the

1 THE COURT: That's what Griffin ordered and so where
2 do we stand on that?

3 MR. STARK: It's paid up.

4 MR. SCHNEIDER: We have not been paid, ma'am.

5 THE COURT: And so did you make both the March 5 and
6 the April 5 payment?

7 MR. STARK: Yes, ma'am. I have the receipts right
8 here from the magistrate court.

9 THE COURT: Okay. If you will hand those to me.

10 MR. STARK: Yes, ma'am.

11 THE COURT: Officer Hurt (phonetic) but if you will
12 let Mr. Schneider look at those before you hand them up to me.

13 MR. STARK: Yes, Your Honor. Yes, Your Honor. So
14 this is March through present.

15 MR. SCHNEIDER: This is the statement of account.
16 Okay. Well, I don't know what's going on at the magistrate's
17 office but we have not received payment.

18 THE COURT: Okay. I'm looking at receipts from
19 February 8, from March 2 and from April 4. Each for \$1450.
20 Okay. Mr. Schneider, you just handed me a tenant statement
21 that's showing the statement of account for Mr. Stark and Ms.
22 McNeill?

23 MR. SCHNEIDER: Yes, ma'am. That's right.

24 THE COURT: Okay. Tell me -- you've got a copy in
25 front of you as well?

1 is absolutely not going --

2 MR. SCHNEIDER: Oh, no, that's not what I'm implying.
3 I'm saying once it went under bond, it's been months. They
4 could have paid it at any time. They still -- it's still
5 delinquent. It's not been paid.

6 THE COURT: But they've paid the amount that the
7 magistrate court required them, and that was the purpose of the
8 hearing to set the appeal bond is to determine what amount they
9 were going to pay.

10 MR. SCHNEIDER: I'm not saying they violated the bond.
11 I'm saying they're still delinquent in their rent payments. And
12 it's not a matter of us not accepting it because they could have
13 given a check to the magistrate's office and said, here, give
14 that to the company and they would have given us the check.

15 THE COURT: How about the issue they raised that your
16 representative told them it would be fine to pay it on the 10th?

17 MR. SCHNEIDER: I have no knowledge of that, but that
18 is not what the lease says. And they signed a lease and that is
19 a contract.

20 THE COURT: I'm looking at the lease. I don't see the
21 five day language in your lease, however. I mean I see where it
22 says that rent's due on the first and that if the tenant pays
23 rent after the fifth it's got to be by cashier's check or money
24 order.

25 MR. SCHNEIDER: Yes, ma'am.

1 the portal, and it also shows everyone has been closed. And not
2 only has it been closed, but they've been closed since October
3 and there has not been one entry made since October. That's six
4 months ago.

5 THE COURT: I'm glad to take a look at those if you
6 want to hand them up.

7 MR. SCHNEIDER: I'm sorry. This is the snapshot of
8 the portal. I gave her the XL export but not the raw data.

9 THE COURT: Okay, Mr. Schneider, anything else that
10 you want to tell me, sir?

11 MR. SCHNEIDER: No, not exactly. Only if you have
12 specific questions. There was a lot said there, and some of it
13 isn't entirely accurate, but I have trouble keeping all of those
14 things straight in my mind there was so much said. I will just
15 reiterate that the rent is still past due and I don't understand
16 why they feel it's acceptable to not pay rent.

17 THE COURT: Okay. Thank you, sir. Mr. Stark and Ms.
18 McNeill, anything that you all want to say in reply?

19 MR. STARK: Yes. So first, the rent is not past due.
20 He stated that we have not been paying the rent. As you see, we
21 have the receipt from the magistrate where we have been paying
22 the rent on time every month. Maybe what he --

23 THE COURT: I understand, but it's not -- it's still
24 not showing the balance for January.

25 MR. STARK: Okay. Gotcha.

1 MS. MCNEILL: Yeah. He also stated that they only had
2 to give notice one time, according to the landlord-tenant act.
3 However, that is incorrect. If you were to write that language
4 in the lease, then that would be the final notice. However, if
5 that language is not there you still do have to offer notice to
6 file an eviction or notice of non payment, which they did not
7 do.

8 We have the landlord-tenant act here. And again, we
9 were under a payment arrangement. So when we asked Ms. Kristin,
10 hey, we're trying to pay it on the 10th, she said, oh, yeah,
11 well, we just decided to move for the eviction. That's not --
12 that isn't notice at all.

13 Especially from the beginning of January up until the
14 10th where we've had constant communication with her and let her
15 know what was going on. Everything was fine until the 10th.

16 MR. STARK: Your Honor, to be honest, I honestly
17 believe with the inscription, so in the beginning we had a
18 really bad run in with Ms. Nancy and then they said, okay, well,
19 you guys are not working out so we'll give you Ms. Kristin. I
20 think honestly Ms. Kristin was doing the right thing, but they
21 didn't want to go by that.

22 Ms. Kristin, when she came along, which was I believe
23 October. At that point we were, you know, full on back and
24 forth so to speak, and I think Ms. Kristin was doing the right
25 thing and then once they noticed it like, hey, no, not them. We

1 MR. STARK: Thank you.

2 THE COURT: Thank you all.

3 MR. SCHNEIDER: Ma'am, this is a log of all of the
4 email communications from our perspective as well, I guess, if
5 you are going to accept that you might want to compare it to
6 this one.

7 THE COURT: Okay. Thank you.

8 MR. SCHNEIDER: Thank you.

9 MS. MCNEILL: Your Honor, I do (indiscernible) the
10 last thing. I know I keep saying last thing. I'm sorry. But
11 Mr. Schneider keeps saying that there has been multiple months
12 where we have been behind on rent. That is absolutely false.
13 We were behind on rent in October, which we admitted that we
14 held because they refused to make repairs in the unit.

15 So, yes, we did hold that rent back in October and,
16 yes, we were told by the Hon. Judge -- I believe it was Griffin
17 that we weren't allowed to hold rent any longer and that we had
18 to pay the rent, which we were doing and then, you know,
19 unfortunately, life happened. We lost my mother-in-law. I had
20 a baby three weeks early. I got Covid. He had meningitis.

21 There was a lot that went on in January. I mean,
22 excuse me, yes, December and January and, you know, we stayed
23 communicative with Ms. Kristin. We let her know everything that
24 was going on. Again, you know, I don't know why he keeps saying
25 there's been multiple months where we've been behind. It's only

1 errors of law, although I acknowledge I have given you mixed
2 messages in that since this morning but, you know, the
3 magistrate court is the trial court. This court is not to go
4 back and rehear the evidence and say, well, I might look at it
5 differently. It's just for correcting errors of law.

6 So I'm going to take a close look at everything that
7 y'all have given me and I will issue a ruling to you in writing.

8 MR. SCHNEIDER: Thank you.

9 MR. STARK: Yes, ma'am. Thank you.

10 MS. MCNEILL: Thank you.

11 THE COURT: Thank you.

12 MS. MCNEILL: May I ask you one other question? Would
13 you like all of the emails that we have sent in regards to
14 repairs. You sent this to the owner. We sent this to Ms.
15 Michelle. We have also sent this to Mr. (indiscernible) who is
16 sitting right here today.

17 THE COURT: Anything that you want to hand up, sure.

18 MS. MCNEILL: Okay.

19 MR. STARK: And this is the last thing I will say,
20 Your Honor. I mean for them to say that we told them we are not
21 going to pay January rent, it only makes sense that if we had a
22 payment agreement. So if we say we're not going to pay January
23 rent, why did we pay on the ninth then? That doesn't make
24 sense.

25 THE COURT: I understand your position.

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Jan 29 2025

SC Court of Appeals

FORM 7

PROOF OF SERVICE: Record On Appeal
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge Case No. 2023CP4300148

Jamar Stark & Tyla McNeill,

Appellant

v.

Southern Touch Properties,

Respondent

PROOF OF SERVICE

I certify that I have served the Record On Appeal on Southern Touch Properties by sending a copy of it to Southern Touch Properties, office located at 5 Medical Court, Sumter, South Carolina 29150, by US Postal Mail on January 29, 2025.

January 29, 2025

Jamar Stark,
Tyla McNeill
6195 Fish Rd
Sumter, South Carolina
29040
(803) 229-6401
Appellant

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