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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Vernon F. Dunbar, Circuit Court Judge

Appellate Case No. 2025-002506

Andrew Barr,

Respondent,

v.

Dave H. Squalli,

Appellant.

RESPONDENT'S FINAL BRIEF



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STATUTES

S.C. Code Ann. § 18-7-170

S.C. Code Ann. § 27-40-410

S.C. Code Ann. § 27-40-510

STATEMENT OF ISSUES ON APPEAL

- I. Whether the Circuit Court correctly concluded that Appellant failed to establish damages to the premises beyond ordinary wear and tear.
- II. Whether the Circuit Court properly awarded treble damages pursuant to S.C. Code Ann. § 27-40-410(b) based on Appellant's failure to comply with statutory requirements governing the return of a security deposit.

STATEMENT OF THE CASE

This appeal arises from a landlord-tenant dispute concerning the return of a residential security deposit.

Andrew Barr ("Tenant" or "Respondent") leased a condominium from Dave H. Squalli ("Landlord" or "Appellant") from March 1, 2017, through June 30, 2021, pursuant to two successive written lease agreements. (R. pp. 7-12). The Tenant paid a \$1,900.00 security deposit at the inception of the tenancy. Following termination of the lease, the Landlord refused to return the security deposit and asserted a claim for property damage. On August 19, 2021, the Tenant initiated an action in the Magistrate Court of Greenville County seeking return of the deposit. (R. pp. 3-6). The Landlord filed a counterclaim alleging property damage. (R. pp. 13-16).

On June 28, 2023, the Magistrate Court entered judgment in favor of the Landlord and awarded damages against the Tenant in the amount of \$4,573.42, including attorney's fees and costs¹. (R. pp. 203-204). Tenant appealed the judgment to the Greenville County Court of Common Pleas pursuant to S.C. Code Ann. § 18-7-170. (R. p. 205).

On November 3, 2025, the Circuit Court entered an order reversing the Magistrate Court's ruling in its entirety. (R. pp. 213-218). After reviewing the record, including video

¹ The Magistrate Court's Order is incorrectly labeled "Summons and Complaint".

evidence of the premises, the Circuit Court found that the Landlord failed to present "credible evidence of damage beyond reasonable wear and tear" within the meaning of the lease agreements and South Carolina law. (R. p. 215).

The Circuit Court further found that the Landlord failed to comply with S.C. Code Ann. § 27-40-410 by failing to provide an itemized statement of deductions and had improperly withheld the security deposit. (R. p. 216). Based on these findings, the Circuit Court entered judgment in favor of the Tenant and awarded treble damages in the amount of \$5,625.00. (R. p. 216).

The Landlord now appeals that decision, contending that the Circuit Court erred in determining that minor nail holes and similar conditions associated with a four-year tenancy constitute normal wear and tear.

STANDARD OF REVIEW

Appeals from the Magistrate Court to the Circuit Court are governed by S.C. Code Ann. § 18-7-170, which provides that the Circuit Court "shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits," and may "affirm or reverse the judgment of the court below, in whole or in part, as to any or all of the parties, for errors of law or fact." *Bowers v. Thomas*, 373 S.C. 240, 644 S.E.2d 751 (Ct. App. 2007); *Hadfield v. Gilchrist*, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000).

On appeal to this Court, the Circuit Court's decision, which originated from a magistrate's judgment, the standard of review is generally narrower, focusing on errors of law. Unless an error of law is found, the circuit court's holding will be affirmed if there are any facts supporting its decision (*Bowers v. Thomas, supra*). On review from the circuit

court, the appellate court is without authority to reverse findings of fact if there is any supporting evidence. *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 234, 312 S.E.2d 20, 21 (Ct. App. 1984).

An action for breach of contract is an action at law. *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs., Ltd v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

This Court may not reweigh the evidence or substitute its judgment for that of the Circuit Court.

ARGUMENT

I. THE CIRCUIT COURT'S FINDING THAT APPELLANT FAILED TO PROVE DAMAGE EXCEEDED NORMAL WEAR AND TEAR IS SUPPORTED BY THE RECORD AND MUST BE AFFIRMED.

The Circuit Court correctly determined that the Landlord failed to establish any damage to the premises beyond normal wear and tear. That conclusion is supported by competent evidence in the record.

The subject lease agreements required Tenant to return the premises in "clean and good condition, except for reasonable wear and tear," and permitted deductions only for "repair of damages... above ordinary wear and tear." (R. pp. 7-12). The terms of the Lease Agreements place the burden squarely on the Landlord to demonstrate damage exceeding ordinary residential use when retaining any portion of the security deposit. (Id.)

The parties entered into a lease agreement on March 1, 2017, which provided:

4. SECURITY DEPOSITS: The total of the above deposits shall secure compliance with the terms and conditions of this agreement and shall be refunded to RESIDENT within 30 days after the premises have been completely vacated less any amount necessary to pay OWNER:

- a) Any unpaid rent,
- b) Cleaning costs,
- c) Key replacement costs,
- d) Cost for repair of damages to premises, furnishings and/or common areas **above ordinary wear and tear**
- e) Any other amount legally allowable under the terms of this agreement.

13. CONDITION OF PREMISES: RESIDENT acknowledges that he/she has examined the premises and that said premises, all furnishings, fixtures furniture, plumbing, heating, electrical facilities, all items listed on the attached property condition checklist, if any, and/or all other items provided by OWNER are all clean, and in good satisfactory condition except as may be indicated elsewhere in this Agreement. RESIDENT agrees to keep the premises and all items in good order and good condition and to Immediately pay for costs to repair and/or replace any portion of the above damaged by RESIDENT, his guests and/or invitees, except as provided by law. At the termination of this Agreement, all of above items in this provision shall be returned to OWNER in clean and good condition **except for reasonable wear and tear** and the premises shall be free of all personal property and trash not belonging to OWNER. It is agreed that all dirt, holes, tears, burns, and stains **of any size or amount** in the carpets, drapes, walls, furnishings, fixtures, furniture and/or any other part of the premises, do not constitute reasonable wear and tear.

(R. pp. 7-8). These terms of the second lease were identical. (R. pp. 10-11).

Appellant's argument that the lease language is clear and concise is internally inconsistent and legally untenable. At trial, Appellant acknowledged that the meaning of "reasonable wear and tear" was the central issue for determination and necessarily one requiring a factual evaluation. (R. p. 124, lines 20-24). Appellant expressly concedes that the lease language was ambiguous as to this issue. (App. Final Brief, p.7). Yet on appeal, Appellant reverses course and argues the relevant provisions are clear and unambiguous and the contract language was misinterpreted by the Circuit Court (App. Final Brief, pp. 7-10). Appellant cannot simultaneously assert that a contractual term required factual interpretation at trial, while arguing on appeal that the term has a clear and definite meaning. This contradiction inherently undermines the Appellant's position and confirms that the issue was properly treated by the Circuit Court as a question of fact.

Under South Carolina law, where a contract is ambiguous or capable of more than one reasonable interpretation, the determination of the parties' intent becomes a question of fact. *Cafe Assoc. Ltd. v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991). In such circumstances, the

court's role is to give effect to the parties' intent based on the evidence presented. *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992), *Columbia East Assoc. v. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct.App.1989).

The evidence demonstrates that Tenant fully complied with the lease terms and returned the premises in a clean and satisfactory condition as required by the Lease Agreement. When the Tenant took possession in 2017, the condominium had not been freshly painted or the carpets cleaned. (R. p. 222, lines 6-14). With the Landlord's knowledge and consent, the Tenant repainted the unit and cleaned the carpets at his own expense. (R. p. 222, lines 9-14). Tenant and his wife resided in the unit for more than four years and used the premises solely for ordinary residential purposes. (R. p. 222, lines 4-5). At the conclusion of the tenancy, Tenant paid to have the condo professionally cleaned and the carpets cleaned to ensure the property was returned in a clean and satisfactory condition. (R. p. 222, lines 14-20).

Video evidence presented to the Circuit Court showed only minor scuffing and small nail holes associated with the hanging of artwork—conditions which are consistent with ordinary use. The record contains no evidence of tenant-caused damage, destruction, or deterioration resulting from negligence, intentional harm, or misuse. (R. Video).

Additionally, testimony from a property management professional established that small nail holes are commonly regarded within the industry as reasonable wear and tear, the need for repainting following a long-term tenancy to cover cosmetic blemishes is routine and customary, and the cost to repaint is customarily incurred by the landlord. (R. p. 163, lines 13-21; R. p. 171, lines 21-25; R. p. 172, lines 1-3).

South Carolina law distinguishes between ordinary wear and tear and deliberate or negligent damage. In general, "normal wear and tear" is defined as deterioration resulting

from ordinary and expected use of the premises. Damage "beyond normal wear and tear" is generally defined as deterioration which occurs due to negligence, carelessness, accident, or abuse of the premises. *See* S.C. Code Ann. §27-40-510(6). Courts likewise recognize that the length of tenancy is a relevant consideration, as extended occupancy increases the overall ordinary wear and tear on the premises.

Based on the evidence presented and applicable state law, the Circuit Court found that the Tenant's use of the premises over four years was consistent with ordinary residential activity and that the minor conditions observed at move-out did not exceed reasonably expected wear and tear to the premises. (R. pp. 214-215). The court specifically determined that "minor nail holes, scuff marks, and wall blemishes associated with hanging and removing pictures are incidental to normal occupancy and do not constitute damage." (R. p. 215).

Repainting after a four-year tenancy is a paradigmatic example of ordinary maintenance, not tenant-caused damage. Permitting recovery for such costs would improperly shift the burden of general maintenance and repair to the tenant and essentially allows the landlord to charge a "wear and tear penalty", which is contrary to both the lease and South Carolina law.

The record contains ample evidence including witness testimony, documentary evidence, and video documentation of the unit's condition at move-out, all of which support the Circuit Court's finding that the minor touch-up painting to cover cosmetic blemishes was the result of reasonable and expected wear and tear. Where evidence reasonably supports the lower court's factual determinations, those findings are conclusive on appeal. *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, 280 S.C. 232, 312 S.E.2d 20 (Ct. App. 1984). Appellant's disagreement with the Circuit Court's conclusions does not constitute legal error. Rather, it reflects a request for this Court to reach a different factual determination based on the same

record, relief this Court is without authority to grant., and because the Circuit Court correctly applied both the lease and governing law to the facts, the ruling must be affirmed.

II. THE CIRCUIT COURT CORRECTLY AWARDED TREBLE DAMAGES UNDER S.C. CODE §27-40-410(b).

The Circuit Court correctly determined that the Landlord violated S.C. Code Ann. § 27-40-410(b) and that Tenant is entitled to treble damages. Appellant's interpretation of §27-40-410(b) is wholly inconsistent with South Carolina law. The statute does not require proof a landlord acted willfully, negligently, or in bad faith. Rather, the relevant question is whether the landlord to send an itemized statement of any deductions from the security deposit within (30) days of a tenant vacating the premises as required by §27-40-410(a).

In reviewing a damages award, this Court does not reweigh the evidence but determines whether any evidence supports the award. *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 208, 662 S.E.2d 444, 450 (Ct. App. 2008). South Carolina courts have consistently upheld treble damages under similar circumstances. *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990). The statutory remedy provided in §27-40-410(b) reflects the General Assembly's intent to protect tenants and deter improper withholding of security deposits by landlords.

The evidence presented at trial clearly shows that Landlord was required by both South Carolina law and the terms of the lease agreements to return the full security deposit within thirty (30) days after termination of the tenancy, less only those amounts properly attributable to (a) unpaid rent, (b) cleaning cost, (c) key replacement cost, and (d) cost for repair of damage to premises, furnishings, and/or common areas beyond ordinary wear and tear. (R. pp. 7-12). Respondent admits he failed to return a key (\$10.00 fee) and access card (\$15.00 fee), thus \$25.00 should have reasonably been deducted from the \$1,900.00 security deposit. (R. p.

p. 230, lines 14-16). The record reflects that the Tenant vacated the premises on June 30, 2021, and that the Landlord retained the entirety of the \$1,900.00 security deposit. (R. p. 137, lines 5-9; R. p. 127, lines 5-9). The record does not reflect any evidence whatsoever that Landlord sent Tenant an itemized invoice to explain withholding the entire \$1,900.00 security deposit as required by §27-40-410(a). Appellant did not raise the defense of statutory compliance at the lower court level, nor does he raise this as a defense on appeal.

The record clearly establishes Landlord's violation of §27-40-410(a). Violation of this statute allows an award of treble damages by §27-40-410(b). There is no error of law, and the Circuit Court's judgment must be affirmed.

CONCLUSION

The Circuit Court properly exercised its authority under S.C. Code Ann. § 18-7-170 and rendered judgment consistent with both the evidence and applicable law.

The record contains ample evidence supporting the Circuit Court's findings that the Tenant returned the premises in clean and good condition, that any minor imperfections were consistent with ordinary wear and tear, and there was no evidence of damage to the premises beyond normal wear and tear within the meaning of the lease agreement or South Carolina law.

The record also supports the Circuit Court's determination that Landlord failed to comply with the statutory requirements of S.C. Code Ann. §27-40-410(a). Further, the record shows Landlord has continued to withhold the full \$1,900.00 security deposit for almost five (5) years. Accordingly, the award of treble damages is fully supported by the evidence and controlling law.

Appellant has identified no error of law. Instead, Appellant seeks to reweigh the evidence and substitute this Court's judgment for that of the Circuit Court — relief that is not permitted

under the applicable standard of review. Because there is no factual dispute and no error of law, the Circuit Court's Order must be affirmed in its entirety.

A handwritten signature in black ink, appearing to read "Andrew Barr", written in a cursive style.

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