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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Jennifer B. McCoy, Circuit Court Judge

Opinion No. 2026-UP-106
(S.C. Ct. App. filed March 4, 2026)
Case No. 2018-CP-10-3286

Karolina Richardson and Krista Richardson,.....

Respondents,

v.

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments,
Dewberry Capital Corporation, and GREP Southeast, LLC,.....

Petitioners.

**REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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ARGUMENTS

In opposing the issuance of a writ of certiorari, the Respondents Karolina Richardson and Krista Richardson make two principal points. First, they argue that the South Carolina Residential Landlord Tenant Act (“RLTA”) “does not require written notice for the claims brought by Respondents” and instead “actual notice” by the landlord is sufficient. *See*, Return, p. 11. Second, they insist that the answer to all of the “notice” issues is contained in Section 27-40-240, which the Petitioners have not addressed.

As the Respondents concede in their return, there is no evidence of any *written notice* to the landlord until Karolina Richardson sent an email to the landlord on July 10, 2017, at 2:31 a.m. To recap, that email states in part:

For the past couple of weeks we have smelled mold/mildew, but have assumed it was innocent. At the same time my daughter and I have been suffering from severe allergy symptoms. As of yesterday I noticed black mold on the bathroom CEILING – assume to be from upstairs. Today we notice black mold from behind washer. I need this addressed today.

(R. 323, 341-342, 1106-1107). Recognizing that the Petitioners took appropriate remedial action promptly in response to that written notice, the Respondents argue that Sections 27-40-440(a)(2), (3), and (5) “do not require **written** notice to the landlord.” *See*, Return, p. 12. (Emphasis in original). The Respondents then insist that there was earlier notice of defects or deficiencies, just not *written notice*.

Not surprisingly, the Respondents’ position is incorrect both legally and factually. In fact, it is quite compelling that the Respondents’ own counsel questioned Karolina Richardson about that July 10, 2017 email as follows:

Q. So on July 10, you actually saw mold and *called it in as you were supposed to do by notifying, I think by a call and an e-mail*, to the Oyster Park folks that you discovered mold in your apartment; is that right?

A. Yes, sir.

Q. And so this is another GreyStar document dated 7/10/17, again unit 101, the second unit, "Occupant of apartment 101 *notified management via e-mail* her concern with black mold in her apartment that is seriously affecting the health of herself and her daughter." Was that a truthful statement you made at that time?

A. I'm sorry?

Q. Was that true?

A. Yes, sir.

(R. 324). (Emphasis added). As the italicized language shows, the Respondents' own counsel recognized that written notice was required and was given on July 10, 2017.

Nonetheless, the testimony aside, the precise language of the relevant sections of the RLTA establish the requirement that the tenant provide *written notice* of a deficiency requiring correction, and the absence of that written notice is fatal to a RLTA claim. *See, Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495, 497 (Ct. App. 2009) (RLTA requires "delivery of 'a written notice to the landlord specifying the acts and omissions constituting the breach'"). Nonetheless, the Respondents attempt to engage in statutory gymnastics to argue that Sections 27-40-440(2), (3), and (5) somehow do not require written notice. The proper analysis, however, starts and ends with the enabling provisions of the RLTA – the Code sections that allow for a private right

of action. Those are codified in Section 27-40-610 and Section 27-40-630. Both of those enabling sections reference Section 27-40-440, which must also be read *in pari materia*.¹

Section 27-40-610(b) specifically references Section 27-40-440 and provides that “the tenant may recover actual damages ... for any noncompliance by the landlord with ... § 27-40-440.” S.C. Code Ann. § 27-40-610(b). Section 27-40-610(b) must be read in conjunction with Section 27-40-610(a), which states:

[I]f there is a material noncompliance by the landlord with the rental agreement or a noncompliance with § 27-40-440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a **written notice** to the landlord 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 within fourteen days.

S.C. Code Ann. § 27-40-610(a). (Emphasis added). Therefore, Section 27-40-610(a) and (b), as read *in pari materia*, allow for a private right of action for actual damages for a violation of Section 27-40-440 after the tenant delivers “a **written notice** to the landlord specifying the acts and omissions constituting the breach.” (Emphasis added).

In the same manner, Section 27-40-630(d) provides:

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.

¹ As our appellate courts have held, statutes are to be construed *in pari materia* meaning that statutes governing the same subject matter “should be construed together since they constitute one law, one system and are governed by one spirit and policy and that it was the intent of the Legislature that they be harmonized and effect given to each statute unless they are totally inconsistent.” *Spoone v. Newsome Chevrolet Buick*, 306 S.C. 438, 412 S.E.2d 434, 438 (Ct. App. 1991).

S.C. Code Ann. § 27-40-630(d). While Section 27-40-630(d) does not specifically mention Section 27-40-440, it must be read *in pari materia* with Section 27-40-630(a), which reads: “If the landlord is negligent or wilful in failing to provide essential services as required by the rental agreement or § 27-40-440, the tenant may give **written notice** to the landlord specifying the breach.” S.C. Code Ann. § 27-40-630(a). (Emphasis added). Read *in pari materia*, those provisions of the same Code section make reference to Section 27-40-440 and the requirement of *written notice* to state an actionable claim.

In their return, the Respondents seem to argue that their case was brought pursuant to Section 27-40-610 rather than Section 27-40-630. As for the requirement of written notice, however, it makes no difference – written notice by the tenant is a requirement under both enabling statutes. Yet, to the extent that the Respondents suggest that Section 27-40-440 stands alone as its own enabling statute, that is not supported by the plain language of the RLTA or any prevailing case law. There is no provision in Section 27-40-440 allowing for a private right of action. The enabling language giving rise of a private right of action is set forth in Sections 27-40-610 and 27-40-630, both of which expressly reference Section 27-40-440 and both of which require written notice to state an actionable claim.

Now, at this late stage of the litigation, the Respondents have raised Section 27-40-240 for the first time. The Respondents act as if it is the Petitioners who have purposefully disregarded Section 27-40-240, which is a general “notice” provision in the RLTA; however, if the truth be known, neither side, nor the trial court, nor the Court of Appeals, have cited or relied on Section 27-40-240 to date. The statute has not been cited a single time in any previous briefs or rulings in this litigation. From the Petitioners’ perspective, that is because Section 27-40-240 adds little to the discussion of “written notice” as set forth in the two enabling statutes, Sections

27-40-610 and 27-40-630. Section 27-40-240 does provide some additional support for the interpretation of the RLTA, as urged by the Petitioners. As discussed, the enabling statutes require that the tenant “give” or “deliver” *written notice* to the landlord, and Section 27-40-240(B) gives some further explication for “giving” notice, and “in the case of the landlord” the written notice is to be “delivered at the place of business of the landlord through which the rental agreement was made or at any place held out of the landlord as the place for receipt of the communication.” S.C. Code Ann. § 27-40-240(B)(2). Thus, contrary to the Respondents’ argument, the “delivery” or “giving” of notice by a tenant does not equate with “actual notice”; it requires an affirmative act by the tenant. Admittedly, however, Section 27-40-240 does not address whether or not “written notice” is required from the tenant. That language is clearly stated in the enabling statutes, which offer no suggestion that something other than “written notice” is sufficient to state an actionable claim under the RLTA. Thus, Section 27-40-240 does not really carry the day for either side, and that is probably why it was not discussed by anyone until now – when the Respondents tried to spring a “gotcha” argument so late in the game.

Instead, the Court is urged to look again at *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989), wherein this Court recognized that “the RLTA is in derogation of common law and, therefore, the statute should be strictly construed.” 385 S.E.2d at 373. That strict construction, as required under *Watson*, requires that a tenant provide written notice of a deficiency or defect in order to trigger the remedial provisions of the RLTA. That requirement is clear: it eliminates the uncertainty or guesswork and the swearing contest that would otherwise ensue between landlord and tenant. The notice must be in writing; oral notice or even actual notice is not sufficient. See, *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E.2d 361 (2005) (where this Court differentiated between statutes requiring “actual notice” as opposed

to “written notice”).

The Court should also focus on *Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009), which the Court of Appeals did not even cite, let alone rely on, in the case at bar. In *Robinson*, the Court held that the RLTA requires “delivery of ‘a **written notice** to the landlord specifying the acts and omissions constituting the breach.’” 682 S.E.2d at 497, *citing* S.C. Code Ann. § 27-40-610(a). (Emphasis added). The Court further “found the Landlord–Tenant Act requires **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.” 682 S.E.2d at 497-498. (Emphasis added). That case involved the absence of smoke detectors. The Court recognized that the tenant failed to provide written notice of the lack of smoke detectors and, among other reasons, that barred the tenant’s RLTA claim. Without question, the Court in *Robinson* applied the written notice requirement to claims based on Sections 27-40-440(a)(1) and (2). The same should be applied here.

Finally, touching again on the preservation issue, it bears repeating that “notice” was not a disputed issue in the trial court. In fact, as outlined at length in the Petition for Writ of Certiorari, there was no dispute in the trial court and there remains no dispute on appeal that Karolina Richardson provided *written notice* of black mold with her email sent July 10, 2017. The Petitioners never defended this case by suggesting that written notice as required by the RLTA was not provided by the Respondents. Instead, the Petitioners argued at directed verdict and again at JNOV that once written notice was provided, it is undisputed that the Petitioners took immediate remedial action within the span of eight days. It is for that reason that the Petitioners are entitled to judgment as a matter of law – not for a lack of written notice.

Notably, the Respondents do not dispute that remedial action was completed within eight

days of receipt by the landlord of the written email notice from Karolina Richardson on July 10, 2017. However, that has caused the Respondents to attempt to advance this “written notice” versus “actual notice” dispute -- as asserted for the first time on appeal -- to try to salvage the verdict. That further caused the Court of Appeals to erroneously conclude that the “notice” issue was not preserved because it was not argued below. That also caused the Court of Appeals to erroneously conclude that liability may be triggered by the landlord’s knowledge of any deficiency prior to receiving written notice of that deficiency from the tenant. That, however, ignores the requirements of RLTA which ties a landlord’s liability to the receipt of written notice of a deficiency from the tenant. That also ignores this Court’s decision in *Young v. Morrissey*, 285 S.C. 236, 329 S.E.2d 426 (1985), which declares that under the common law “a landlord owes no duty to maintain leased premises in a safe condition.” 329 S.E.2d at 428.

In sum, the grant of a writ of certiorari is needed to provide needed guidance to the bench and bar. The landlord’s liability arises only after written notice is given by the tenant. As discussed, the RLTA specifically provides that 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 Ann. § 27-40-630(d). The RLTA requires “delivery of ‘a written notice to the landlord specifying the acts and omissions constituting the breach.’” *Robinson*, 682 S.E.2d at 497, *citing* S.C. Code Ann. § 27-40-610(a).

CONCLUSION

Based on the foregoing discussion, the Petitioners respectfully renew their request that this Court grant their Petition for Writ of Certiorari.

Respectfully submitted,

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