

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

MAR 24 2016

J.C. NICHOLSON CIRCUIT JUDGE

SC Court of Appeals

Case no. 2015-002039

Garnaris Hamilton.....Appellant,

v.

Henry Scott, Sr.....Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Bruce A. Berlinsky, Esquire
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Garnaris Hamilton
4453 Jenwood St.
Ladson, SC 29456
843-718-8952

March 22, 2016

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843-718-8952

843-345-1344

103 WATERSTONE WA
GOOSE CREEK 29944

Residential Lease

APARTMENT - CONDOMINIUM - HOUSE

BY THIS AGREEMENT made and entered into on November 1, 2013, between Henry Scott, herein referred to as Lessor, and Garnaris Hamilton herein referred to as Lessee. Lessor leases to Lessee the premises situated at 2208 Clinton Street, Charleston, SC, for a term of 1 year, to commence on November 1, 2013, and to end on November 1, 2014 at 12 midnight.

1. Rent. Lessee agrees to pay, without demand, to Lessor as rent for the demised premises the sum of Five hundred Fifty dollars (\$550.00) per month in advance on the first day of each calendar month.

If Lessee shall fail to pay rent when due, or perform any terms hereof, after not less than three (3) days written notice of such default given in the manner required by law, Lessor at his option, may terminate all rights of Lessee here under, unless Lessee, within said time, shall cure such default.

2. Form of Payment. Lessee agrees to pay rent each month in the form of one cashier's check, OR one money order made out to Henry Scott.

3. Late Payments. For any rent payment not paid by the date due, Lessee shall pay a late fee in the amount of Thirty Dollars (\$30).

4. Returned Checks. If, for any reason, a check used by Lessee to pay Lessor is returned without having been paid, Lessee will pay a charge of thirty-five Dollars (\$35) as additional rent AND take whatever other consequences there might be in making a late payment. After the second time a Lessee's check is returned, Lessee must thereafter secure a cashier's check or money order for payment of rent.

5. Security Deposit. Of \$ 550.00, receipt of which is acknowledged by Lessor, as security for the faithful performance by Lessee of the terms hereof, to be returned to Lessee, without interest, except where required by law, on the full and faithful performance by him of the provisions hereof.

Prior to release of security deposit at the end of the natural lease agreement, a inspection of the home will be conducted. If damage is done to the home that is not due to normal wear and tear Lessor reserves the right to deduct the cost of repair from the Security Deposit. Remaining balance of the security deposit will be refunded to the Lessee within 30 days from the date possession is delivered to the Lessor.

6. Use of Premises. The demised premises shall be used and occupied by Lessee exclusively as a private single family residence, and neither the premises nor any part thereof shall be used at any time during the term of this lease by Lessee for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family residence. Lessee shall comply with all the sanitary laws, ordinances, rules, and orders of appropriate governmental authorities affecting the cleanliness, occupancy, and preservation of

the demised premises, and the sidewalks connected thereto, during the term of this lease.

7. Number of Occupants. Lessee agrees that the demised premises shall be occupied by no more than ____ persons, consisting of ____ adult(s) and ____ children.

8. Condition of Premises. Lessee stipulates that he or she has examined the demised premises, including the grounds and all buildings and improvements, and that they are, at the time of this lease, in good order, repair, and a safe, clean and tenantable condition.

9. Locks. Lessee agrees not to change locks on any door or mailbox without first obtaining Lessor's written permission. Having obtained written permission, Lessee agrees to pay for changing the locks and to provide Lessor with one duplicate key per lock.

10. Assignment and Subletting. Without the prior written consent of Lessor, Lessee shall not assign this lease, or sublet or grant any concession or license to use the premises or any part thereof. A consent by Lessor to one assignment, subletting, concession or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession, or license. An assignment, subletting, concession, or license without the prior written consent of Lessor, or an assignment or subletting by operation of law, shall be void and shall, at Lessor's option, terminate this lease.

11. Alterations and Improvements. Lessee shall make no alterations to the buildings on the demised premises or construct any building or make other improvements on the demised premises without the prior written consent of Lessor. All alterations, changes, and improvements built, constructed, or placed on the demised premises by Lessee, with the exception of fixtures removable without damage to the premises and movable personal property, shall, unless otherwise provided by written agreement between Lessor and Lessee, be the property of Lessor and remain on the demised premises at the expiration or sooner termination of this lease. The Lessor reserves the right to make alterations or improvements as necessary provided a 24 hour notice is give.

12. Damage to Premises. If the demised premises, or any part thereof, shall be partially damaged by fire or other casualty not due to Lessee's negligence or willful act or that of his employee, family, agent, or visitor, the premises shall be promptly repaired by Lessor and there shall be an abatement of rent corresponding with the time during which, and the extent to which, the leased premises may have been untenable; but, if the leased premises should be damaged other than by Lessee's negligence or willful act or that of his employee, family, agent, or visitor to the extent that Lessor shall decide not to rebuild or repair, the term of this lease shall end and the rent shall be prorated up to the time of the damage.

13. Dangerous Materials. Lessee shall not keep or have on the leased premises any article or thing of a dangerous, inflammable, or explosive character that might unreasonably increase the danger of fire on the leased premises or that might be considered hazardous or extra hazardous by any responsible insurance company.

14. Utilities. Lessee shall be responsible for arranging for and paying for all utility services

required on the premises.

15. Right of Inspection (Every 3 months). Lessor and his agents shall have the right at all reasonable times during the term of this lease and any renewal thereof to enter the demised premises for the purpose of inspecting the premises and all building and improvements thereon.

16. Maintenance and Repair. Lessee will, at his sole expense, keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof. In particular, Lessee shall keep the fixtures in the house or on or about the leased premises in good order and repair; keep the furnace clean, change the air filters in the air conditioners; keep the electric bills in order; keep the walks free from dirt and debris; and, at his sole expense, shall make all required repairs to the plumbing, range, heating, apparatus, and electric and gas fixtures whenever damage thereto shall have resulted from Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor. Major maintenance and repair of the leased premises, not due to Lessee's misuse, waste or neglect or that of his employee, family, agent, or visitor, shall be the responsibility of Lessor or his assigns. Lessee agrees that no signs shall be placed or painting done on or about the leased premises by Lessee or at his direction without the prior written consent of Lessor.

17. Painting. Lessor reserves the right to determine when the dwelling will be painted unless there is any law to the contrary.

18. Insurance. Lessor has obtained insurance to cover fire damage to the building itself and liability insurance to cover certain personal injuries occurring as a result of property defects or Lessor's negligence. Lessor's insurance does not cover Lessee's possessions or Lessee's negligence. Unless the opt-out clause below is initialed by both Lessee and Lessor, Lessee must obtain a renter's insurance policy to cover damage or loss of personal possessions as well as losses resulting from Lessee's negligence.

19. Pets. No pets are allowed in the house. **NO PITBULL OR ROCKWILDERS**

20. Display of Signs. During the last thirty days of this lease, Lessor or his or her agent shall have the privilege of displaying the usual "For Sale" or "For Rent" or "Vacancy" signs on the demised premises and of showing the property to prospective purchasers or tenants.

21. Rules and Regulations. Lessor's existing rules and regulations, if any, shall be signed by Lessee, attached to this agreement and incorporated into it. Lessor may adopt other rules and regulations at a later time provided that he or she have a legitimate purpose, not modify Lessee's rights substantially and not become effective without notice of at least two (2) weeks.

22. Subordination of Lease. This lease and Lessee's leasehold interest hereunder are and shall be subject, subordinate, and inferior to any liens or encumbrances now or hereafter placed on the demised premises by Lessor, all advances made under any such liens or encumbrances, the interest payable on any such liens or encumbrances, and any and all renewals or extensions of such liens or encumbrances.

23. Holdover by Lessee. Should Lessee remain in possession of the premises with the consent of Lessor after the natural expiration of this lease, **the lease will automatically be renewed for an additional one year term.** If the Lessee desires to move from the premises at

the expiration of the lease, he/she will need to notify the Lessor in writing at a minimum, of 30 days in advance of the natural expiration of the lease.

24. Surrender of Premises. At the expiration of the lease term, Lessee shall quit provided that he/she gives the lessor 30 days written notice and surrender the premises hereby demised in as good state and condition as they were at the commencement of this lease, reasonable use and wear thereof and damages by the elements excepted.

25. Default. If any default is made in the payment of rent, or any part thereof, at the times hereinbefore specified, or if any default is made in the performance of or compliance with any other term or condition hereof, the lease, at the option of Lessor, shall terminate and be forfeited, and Lessor may re-enter the premises and remove all persons there from. Lessee shall be given written notice of any default or breach, and termination and forfeiture of the lease shall not result if, within fifteen days of receipt of such notice, Lessee has corrected the default or breach or has taken action reasonably likely to effect such correction within a reasonable time.

26. Abandonment. If at any time during the term of this lease Lessee abandons the demised premises or any part thereof, Lessor may, at his or her option, enter the demised premises by any means without being liable for any prosecution therefore, and without becoming liable to Lessee for damages or for any payment of any kind whatever, and may, at his or her discretion, as agent for Lessee, re-let the demised premises, or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such re-letting, and, at Lessor's option, hold Lessee liable for any difference between the rent that would have been payable under this lease during the balance of the unexpired term, if this lease had continued in force, and the net rent for such period realized by Lessor by means of such re-letting. If Lessor's right of re-entry is exercised following abandonment of the premises by Lessee, then Lessor may consider any personal property belonging to Lessee and left on the premises to also have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and is hereby relieved of all liability for doing so.

27. Binding Effect. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this lease.

28. Radon Gas Disclosure. As required by law, (Landlord) (Seller) makes the following disclosure: "Radon Gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in every state. Additional information regarding radon and radon testing may be obtained from your county public health unit."

29. Lead Paint Disclosure. "Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention."

30. Severability. If any portion of this lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

31. Other Terms: If lessor has to keep the maintenance of the yard in compliance with city code there will be a Fifty dollar charge (\$ 50) each time the yard is kept in compliance with city code.

Pest Control: Lessee will be responsible for paying quarterly fees to the desired Pest control company of the selected by the Lessor. The amount of the fee, will be determined by the contracting company.

Attorney's Fees: The prevailing party in an action brought for the recovery of rent or other moneys due or to become due under this lease or by reason of breach of any covenant herein contained or for the recovery of the possession of said premises, or to compel the performance of anything agreed to be done herein, or to recover for damages to said property, or to enjoin any act contrary to the provisions hereof, shall be awarded all of the costs in connection and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this lease the day and year first written above.

Lessor: _____

Lessee: _____

Lessee: _____

***NOTICE:** State law establishes rights and obligations for parties to rental agreements. This agreement is required to comply with the Truth in Renting Act or the applicable Landlord Tenant Statute or code of your state. If you have a question about the interpretation or legality of a provision of this agreement, you may want to seek assistance from a lawyer or other qualified person.

IN THE SMALL CLAIMS COURT
CASE NO: 2015CV1011500219
COMMON PLEAS: 2015-CP-10-3372

RETURN

FILED IN
CHARLESTON COUNTY

JUL 07 2015

SMALL CLAIMS COURT

Defendant - Respondent.

The action commenced by the Plaintiff Hamilton filing a complaint alleging violations of the provisions in the South Carolina Landlord Tenant Act relating to ouster of a tenant and deposit.

The pro se answer filed by Scott asserted that Hamilton received proper written notice of termination and that Hamilton abandoned the household and his personal property by failing to secure it and leaving doors open.

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JULIE J. ARNSTROUD
CLERK OF COURT
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A non-jury trial was conducted on May 27, 2015. The court ruled in favor of the Defendant Scott by written order dated June 1, 2015.

Factual Background

Mr. Hamilton admitted the lease into evidence which expressed an expiration date of November 1, 2014 at midnight. The lease commenced on November 1, 2013 and stated it was for a one year term.

Hamilton testified that he appeared on November 1, to move everything out but that Scott along with a painter and another individual cleaning the premises had already entered.

Hamilton testified that numerous items were missing and recited their value. He testified that his monthly rent contribution was twenty two dollars per month and that he paid a security deposit of five hundred fifty dollars which was not returned.

Scott testified that he discovered an unauthorized dog and sent written notice per the lease terminating the tenancy as of October 1, 2014. He testified that between twelve to thirteen hundred dollars was expended for repairs and painting including but not limited to damage from the dog. This expenditure exceeded the security deposit.

Shirley Washington, the sister in law of Scott who was also the next door neighbor of Hamilton testified that she observed several trucks loaded by Hamilton and he appeared to have completely vacated.

Emily Hamilton testified that she cleaned the property for Scott. She testified that Hamilton appeared and did not want to recover anymore items left at the premises. She described the items as trash. Emily Hamilton did not observe any of the items that the Plaintiff Hamilton claimed to be missing.

Conclusions

The court found that appropriate written notice to terminate the lease was delivered to Hamilton by Scott prior to the expiration of the lease. Hamilton failed to prove an ouster by the preponderance of the evidence.

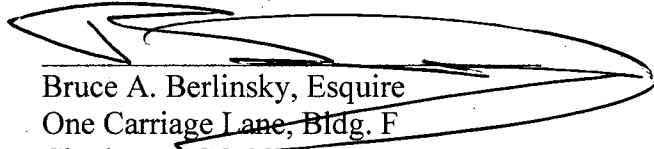
Additionally, the court found that although the security deposit was withheld it was not wrongfully withheld. The ruling was that the expenses incurred by the landlord exceeded the deposit and that damages could not be recovered under S.C. Code of Laws, section 27-40-410.

Respectfully Submitted,

James Turner, Magistrate

North Charleston, South Carolina
2015

I certify that this Supplemental Record on Appeal contains no matter which is irrelevant to this appeal.



Bruce A. Berlinsky, Esquire
One Carriage Lane, Bldg. F
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

March 22, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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J.C. NICHOLSON CIRCUIT JUDGE

SC Court of Appeals

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Garnaris Hamilton.....Appellant,

v.

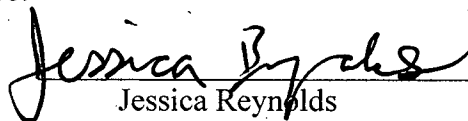
Henry Scott, Sr.....Respondent.

PROOF OF SERVICE

I, Jessica Reynolds, legal assistant to Bruce A. Berlinsky, Esquire, do hereby certify that I have this date mailed a true and correct copy of the foregoing and **SUPPLEMENTAL RECORD ON APPEAL**, postage prepaid, and deposited with the United States Postal Service as follows:

Garnaris Hamilton
4453 Jenwood St.
Ladson, SC 29456

Dated this 23rd day of March, 2016.


Jessica Reynolds

BRUCE A. BERLINSKY, P.A.
Attorney at Law

Mailing Address:
PO Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
Bruce@berlinskylawfirm.com

March 23, 2016

VIA FED EX

SC Court of Appeals
Honorable Jenny Abbott Kitchings
Clerk of Court
1220 Senate St.
Columbia, SC 29201

RECEIVED

MAR 24 2016

SC Court of Appeals

Re: Garnaris Hamilton v. Henry Scott, Sr.
Appellate Case No.: 2015-002039

Dear Clerk Kitchings:

In connection with the above referenced matter, enclosed please find the following:

1. Original and 15 copies of Supplemental Record on Appeal
2. Original and 15 copies of Final Brief of Respondent
3. Proof of Service of Supplemental Record on Appeal
4. Proof of Service of Final Brief of Respondent

By copy of this letter, I am serving copies of the foregoing on the Appellant.

If you need anything further, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

Bruce A. Berlinsky

BAB/jlr
Enclosures

CC: Garnaris Hamilton
4453 Jenwood Street
Ladson, SC 29456

ORIGIN ID: CHSA (843) 852-2202
BRUCE BERLINSKY
BRUCE A. BERLINSKY, PA
ONE CARRIAGE LANE, BUILDING F

CHARLESTON, SC 29407
UNITED STATES US

SHIP DATE: 23MAR16
ACTWGT: 1.00 LB
CAD: 3050098/INET3730

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TO THE SOUTH CAROLINA COURT OF APPEALS
HONORABLE JENNY ABBOTT KITCHINGS
1220 SENATE ST

COLUMBIA SC 29201

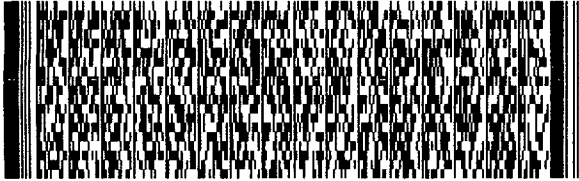
(803) 734-1890

REF: HENRY SCOTT 15-030

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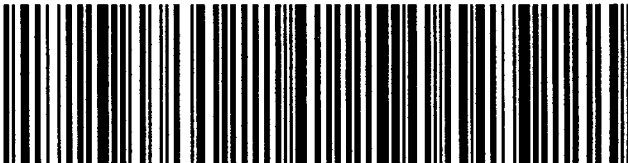
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MAR 24 2016

SC Court of Appeals