

THE STATE OF SOUTH CAROLINA IN THE COURT APPEAL

APPEAL FROM CHARLESTON COUNTY

J.C. Nicholson, Judge

CASE NO. 2015-CP-10-3372

Appellant No. 2015-002039

RECEIVED

MAY 01 2017

S.C. SUPREME COURT

Gernaris Hamilton.....Appellant

v.

Henry Scott Sr.....Respondent

APPELLANTS FINAL BRIEFS

Sworn to before me
8 February 2016

[Signature]
my commission expires
1 October 2019

[Signature]

Garnaris Hamilton

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TABLE OF CONTENTS

Table of Authorities.....	2
Statement of issues on Appeal.....	3
Statement of the case.....	4
Facts.....	5-6
Arguments.....	7-10
Conclusion.....	11

TABLES OF AUTHORITIES

<u>Boykin V. Alabama</u> 395U.S.238S.Ct.1709.23L.E.d.2d.274..... (1969).....	9
<u>Chavous V. Brown</u> 385S.E.2d206..... (1989).....	9
<u>Gaskin V. Blue Cross Blue Shield of SC</u> 271S.C.101.245.S.E.2d.598 (1978).....	7
<u>Graham V. Town of Loris</u> 272.S.C.442.248S.E.2d.594..... (1978).....	8
<u>Hiott V. Guaranty Nat. Ins. Co.</u> 496S.E.2d417..... (1997).....	10
<u>Swain V. Alabama</u> 380U.S.202.219.85S, Ct.824.835.13.L.ED2d759 (1965).....	9

STATUTES

S.C. Code Ann 14-7-1050..... (1986).....	9
S.C. Code Ann 15-7-10 (2006), 27-40-530 (1976).....	7
S.C.RPC Rule 407 SCACR.....	8
S.C. Code Ann 18-7-190..... (1976).....	10
S.C. Code Ann 14-7-1050.....	9

OTHER AUTHORITIES

Restatement S.C. CONST. Art. I 22 Due Process..... (1965).....	9
Restatement S.C. CONST. Art. 6 th Amendment Right..... (1992).....	8
Restatement S.C. CONST. Art I 3 Equal Proction..... (1995).....	9
Restatement S.C. CONST. Art. I 4 Jury..... (1965).....	9

STATEMENT OF ISSUES ON APPEAL

1. Because respondent did not have a court order writ of ejection and respondent had no legal rights to enter residence.
2. Because the court did not notify the appellate of a non-jury trial or had a jury trial waiver for the records the expectation was a jury trial, the jurors were there for selection.
3. Because the court dismissed the jurors and only the court dismissed the seated jurors this is state action all the jurors were waiting to be selected at the time of trial.
4. Because the court for good cause could've granted a continuance, after counsel abandon the case or for the record state the fact the trial will continue.
5. Because the findings of the court and conclusion is without evidentiary support the conclusion is erroneous.

STATEMENT OF CASE

On February 6, 2015 Appellant filed in Small Claims Court. That the respondent violated his contract (lease) by entering his dwelling and threw his personal property out, without a Writ of Eviction. Respondent claims that he sent a letter of vacate the property because of a dog on property violated the lease. The lease was under North /Charleston Housing Authority HCV. The Respondent demanded a jury trial several times, Appellant was represented by Attorney William Thrower and Respondent retained Attorney Bruce Berlinsky. On May 27, 2015 the date of trial Attorney Thrower told the judge he had to be in Federal court and left. The judge then dismiss the jurors and had a non-jury trial, without any evidence submitted by Respondent or attorney.

On June 1, 2015, Appeal was filed June 16, 2015 Appellant file pleadings and exhibits on June 29, 2015. Was placed on hearing docket on July 16, 2015 Respondent filed a late answer on July 13, 2015 Appellant file a motion to answer August 6, 2015. The hearing was on August 14, 2015 and denied on August 14, 2015. Motion to amend to a written order was respectfully denied on September 16, 2015. Appellant filed appeal in the Appellant's court on September 25, 2015. The question is legally and constitutional can the landlord enter into the property without a court order Writ of Eviction, then comes the damages of \$7,500 in which the complaint was filed. The Constitution questions a jury trial notice is due process to be informed (when the waiver come in) Waiver on record or in court. The Jurors were in court seated waiting like Appellant was for jury selection, the judge comes in and said I will not be needing you all today and they left. The judge continued with a non-jury trial after all of this, no attorney, no jury, and no evidence or Exhibits from the Respondent only what he thought was legal. Appellant would like to recover for his losses in the amount of \$7,500 plus cost. There was never any written order from either courts on their findings and conclusion of law. Therefore only what is in the transcript and Magistrate's return to file this appeal; the lower court did not look at the pleadings or read it. 20 minutes and out of court and all the responses was with the Attorney William Thrower who did not do his job.

Attorney-Client-Facts

Counsel should have notified the court the he was no longer going to be counsel for the appellate (SCRMC) rules (13) A (14) and (15). These Magistrates court rules were in place, but the non-jury trial proceed (Floyd V. Kosko) 3295 E-2d 459. An attorney that undertakes the representation of a client in a case impliedly agrees to proceed with the case until it has been terminated, and it is not at liberty to abandon it (Trans. Pg 12-lines 12-20). Only word we have is counsel for the respondent whom did not file answer to any pleading in Magistrate's court, court of common plea or Appellant court, but to take his word the record is silent see Exhibit (4) (Notice of motion scheduling pg 1-5). Counsel did not get sanction under SCRCP Rule 15 (A). The court did not rule on these issues.

Contract Facts

The contract is an obligation which arises from actual agreement of parties manifested by written conduct (Trans pg 13-Line 1-13) MRpg S. 44-45 Gaskins v. Blue Cross-Blue Shield of S.C. 271. SC 101 245 S.E. 2d 598 (1978), Moore V. Palmetto State Life INS. CO. 222 S.E. 2d 492, 73 S.E. 2d 688 (1952) If the agreement is manifested by words, the contract was voided on the (30th) 30 of August when respondent wrote the letter. (S.C code Ann 27-40-530 (D)) was clear what needed to be done to enter the dwelling "court order" not a letter or dog neighter abandonment , but a court order, Respondent stated (Scott), he found the "appellant" the appellant was not out of town , or hospitalized the contract was not expired why was there a need to throw out the appellant's procession , no rent was due, electricity, water, food , clothing, appliances, there was no abandonment, respondent had (3) days before the house was to be in back in his possession. Electricity and water were turned on in the new tenant's home on the 5th of November (Exhibit 2 pg 25) There is no reason he gave for his action only what the letter said. A new tenant on the 5th of November, 4 days after respondent discarded the appellant's property, and no itemized statement.

Jury-Fact

Once there was a demand for a jury trial the only way to waiver was by records intelligently and understandingly rejecting the demand. Respondent after counsel for appellant abandon him, the opportunity arises for a non-jury trial not by record but by duress of circumstances. This was time for the court under Magistrate rule's to adjust to the situation not to abide in it by a non-jury trial. The court dismissed the jurors the Magistrate return page one (1). Chavas V. Brown 385 S.E. 2d206. "The trial judge is inextricably involved in the process of obtaining a fair and impartial jury". Because the trial judge makes the determination as to the importability of a "selected jury" we hold his involvement in the selection process in substantial enough to be considered "State Action". Subject to the mandates of the Fourteenth Amendment.

The jurors were in court (see jurors list M.R.pgs 27-33) not once but twice the jury list was sent for a jury trial. There was never a waiver, the court with duress of circumstances let that happen. The records are clear magistrate's return the transcript. This is state action. (Exhibit and Pleading pg 24) (M.R. pg 4)

APPEAL ON ERRORS IN FACT

Because there was no evidence submitted in court this hearing which was supposed to be a Jury trial (M.R. pg. 15 18, 20) was turned into a non-jury trial without due process notice are attorney all fact stated in the Magistrate's return, no writ of ejection, no letter about dog, no (15) fifteen day wait for abandonment, also no waiver from jury trial. There is fact finding or conclusion of law? There's no evidence to reasonable support the court's decision S.C, Code Ann 27-40-530-D, Respondent admitted he went into the house without court order or law enforcement (Trans. Pg. 11 Line 1-9). The Magistrate Court would not modify the finding of fact, because there was no fact (Trans. Pg. 11 Line 7-9). Appellant filed motion to alter and amend under Rule 59 (E) SCRCP only to be denied without the findings of facts from a court order, who's to say what the findings were. (Order filed in appeal September 25, order dated September 18, 2015), everything is in the Magistrate return and the court ordered transcript.

WAIVER

Because the court error in the constitutional requirement to due process and equal protection of the law, the procedural step before any waiver (M.R. pg1) (Trans. Pg. 5, line 10-25 and pg. 12 line 8-10). Magistrates Court Rule's. Rule (13A) Conduct of Trial; Jury Trials; Witnesses; Subpoenas. (A) Trial should be conducted in an informal manner and the South Carolina Rules of Evidence Shall apply but shall be relaxed in the interest of Justice. In the trial of a civil action, in which one or both parties are unrepresented by legal counsel, the court shall question the parties and witnesses in order to assure that all claims and defenses are fully present. (Exhibit and pleading pg. 24) (M.R. pg. 1)

The consent of counsels and sanction of the court must be had, trial by jury is a right guaranteed by the constitutions of both South Carolina and the United States. State V. Arthur cited 374 S.E2d.292.A7 [1]. The state concedes the waiver of a constitutional or statutory right requires a showing on the record that the defendant made the waiver knowingly and intelligently. Chavous V. Brown cite as 385.S.E.2d206 at 209. The function of a jury in South Carolina is to determine the facts from the evidence and apply those facts to the law as charged by the trial jury. There is no underlying distinction between the function of a Criminal Jury and a Civil Jury. One isn't more important than the other. Justice under the law for all parties is the goal of any trial; Appellant expectancy was a Jury trial, the Jurors were in court awaiting selection. Was and when the waiver was presented isn't in the courts records only in the respondent's counsel (Trans pg. 12 line 8-12) that they can at any time without notice decided to waiver after counsel walked out on appellant, constitutional requirements must be had by the court on records. (Exhibit of pleading pg. 24) (M.R. pg. 1)

ARGUMENTS

CONTRACT: LETTER AND LEASE

Because of (Preponderance of evidence of writ)

Because there was a contract between appellant and respondent (M.R. pgs. 35-39) there was an agreement. The contract was an obligation which arises from actual agreement of parties, manifested by words oral or written by conduct (Trans. Pg. 13, Line 1-13) (M.R. pgs. 44-45) Gaskins V. Blue Cross Blue Shield of South Carolina 271 S.C. 101, 245 S.E. 2d 598 (1978), Moore V. Palmetto State Life Ins Co. 222, S.E. 2d 492, 73 S.E. 2d 688 (1952). If the agreement is manifested by words, the contract was void on the (30th) of August when respondent wrote the letter. Now to come to court with frivolous claim that Appellate had a dog and abandoned the property (M.R. pg. 1 Trans. Pg. 11 Line 13-14). It was the letter that broke the lease, no itemized statement, no writ of ejection as required by S.C. Code Ann 27-40-530 and 15-7-10, 27-40-530 Access (D). A landlord has no other right of access EXCEPT: 1. Pursuant to court order; 2. As permitted by 27-40-720 "(Noncompliance affecting health and safety, and 27-40-720)(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)". 3. When accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejection proceeding 4. Unless the tenant has abandoned or surrendered the premises. (Trans. Pg. 4 Line 5-25)

This is not a new finding it was clearly stated in the court of Common Pleas, there's no statement of damages (Trans. Pg. 10 Lines 8-14).

Arguments

ATTORNEY-CLIENT

(M.R. pg.1) The Magistrate Court in its return did not mention counsel but had all the repose's to (M.R. pg. 16-24) Attorney William Thrower, for the court to even ask such a question at a time like this at the hearing is unheard of the records of the hearing is silence on records of Attorney. Attorney-Client privilege was not waived, a person attains the statue of a "client" when that person seeks legal advice by communicating in confidence with attorney for purpose of obtaining such advice. The case was clear under S.C. code Ann 27-40-530 (D). There was no court order or any evidence from the respondent to support it.

Once Attorney William Thrower came to court for the record on March 4, 2015 he was appellants counsel (M.R. p. 16-24). Floyd V. Kosko 329 S.E.2d.459 At 460 [3-5] An attorney who undertakes the representation of a client in a cause impliedly agrees to see case through to its termination and is not at liberty to abandon it (Trans pg. 5 line 10-24 and pg. 12 line 12-20). Counsel had (30) thirty days' notice, counsel should have asked for continuance, appellant had no access to the document which was sent to counsel. How could appellant argue a case he just got abandon under the sixth amendment right to counsel of your choice.

Once attorney William Thrower came to court on March 4, 2015. On the record for the appellant he was counsel. All paper's pertaining to the case he received this becomes attorney client, representation. Under the (6th) Sixth Constitution Amendment appellant was do counsel of his choice.

All through the magistrates return there is no record of counsel for appellant (M.R. pgs. 1-3) the return (M.R. pgs.16-24) everything else is silent and a silent record in any court is impermissible. The court record should have shown that counsel (William Thrower) was not.

Jury Dismissal and Waiver

The Appellant argue that (Scott) Respondent asked for a Jury Trial (SCRMC 22-3-230) March 3, 2015 in respondents answer, on the date of trial the Magistrate Court claim that Jury Trial was waived after he obtained counsel. (M.R. pg.1) and (M.R. pgs. 14-15). There is nothing on the record of when he obtained counsel or waiver of rights by respondent (SCRMC 22-2-170 or pursuant to provision of 22-3-920) affirmative waiver by defendant of his right. Boykin V. Alabama 395U.S.238 (1969). Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which shows that counsel, but intelligently and understandingly rejected the offer anything less and not a waiver. All notice send out was for a Jury Trial alone with the jurors list. The jurors were in court awaiting selection. The respondent did not and could not release Jury pool only the court has that authority to call jurors or release them. Chavous V. Brown 385S.E.2d206At209. Because the trial Judge makes the determination as to the impartiality of a select Jury, We hold his involvement in the selection process is substantial enough to be considered "State Action" under South Carolina Constitution Art. I § 3 Equal Protection requires "All persons to be treated alike under like circumstances and conditions both in privileges conferred and liabilities imposed." "The function "of a Jury in South Carolina is to determine the facts from the evidence and apply those facts to the law as charged by the trial Judge. There is no underlying distinction between the function of a criminal Jury and a civil Jury. One is not more important than the other. Justice under the law for all parties is the goal of any trial. With these issues being such a novel issue in South Carolina the Appellant would asked that the court made a decision on relief, for the Appellant. The outcome of a new hearing would not see justice. (Exhibit and pleading pg. 24)

Before the trial of the issue the Judge stop the case by dismissing the juror's (M.R. pg. 27-33), and continued on with a non-jury trial. The United States Supreme Court has stated that (Peremptory Challenge) has always been consider a necessary part of trial by jury [and] one of the most important rights secured to the accused Swain V. Alabama, 380 u.s. 202, 219, 85 S. ct. 824, 835, 13 L. Ed. 2d 759 (1965) quoting Pointer V. United States, 151 u.s. 396, 408, 14 S. ct. 410, 414, 38L.Ed. 208 (1894). Peremptory Challenges in civil case in this state are provided by statue, section 14-7-1050 Code of Laws of South Carolina, 1976 as amended. The intent of the code section is to give litigants a fair and impartial jury. Chavas V. Brown 385 S.E.2d 206 because the trial Judge made that determination as to the impartiality of dismissing the jurors that were there to be selected it's substantial enough to be considered "State Action" subject to mandates of the fourteenth Amendment.

Trial Judge may excuse Jurors from sitting on particular case, but not to determine constitutional challenges to select a Jury. (Exhibit and pleading pg. 24 M.R. pg. 1)

APPEAL AND ERROR ARGUMENT

The sole fact the respondent in his answer (M.R. pgs. 14-15) that he would bring or produce the writ of ejection in court, only by what is said in the Magistrates return (M.R. pgs. 1-2). The letter from respondent (M.R. pgs. 44-45) Notice to vacate property sent to North Charleston Housing Authority and Appellant dated August 30, 2014 was in fact a broken contract by respondent the lease did not expired until November 1, 2014 at midnight. No reference to dog or abandonment. There was no evidence presented to the court only respondent sister in law who lives in respondent's trailer for free, unauthorized dog and sent written notice (M.R. pgs. 44-45) Trans. Pg. 11 Lines 1-19. There was no evidence presented only word of mouth S.C. Code Ann 27-40-30D. Access: A landlord has no other right of access except; Pursuant to court order; Trans. pg. 10 Line 25 pg. 11 Lines 1-2. There's no evidence Hiott V. Guaranty Nt. Ins. Co. 496 S.E. 29 At. 421 in a non-jury action at law the Judges findings of fact will not be disturbed on appeal unless they're without evidentiary support. They are numerous errors of law in this case. (M.R. pg. 3) S.C. Code Ann 27-40-410; any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due. The court said it, but there was no damages to be itemized. The "case" No Counsel (SCRMC Rule 13 A) No evidence (SCRMC Rule 15 B) No continuance (SCRMC Rule 14). Appellant can neither be a Judge nor a Juror in his own case. Section 14-7-1050 code of law of South Carolina (1976) as amended. The intent to give litigants a fair and impartial Jury.

CONCLUSION

For all the above reasons this Judgement should be reversed, the circuit court erred in applying the test of equal protection and due process of the law, the records of the hearing, the Magistrates return, there is no evidence to support the findings of the court, counsel abandon the case without warning. All the rights guaranteed by the constitutions both South Carolina and United States were not protected, from the start of the hearing to the outcome no evidence was that clause of the constitution to the appellate no state..... Shall deny to any person within its jurisdiction equal protection of the law.

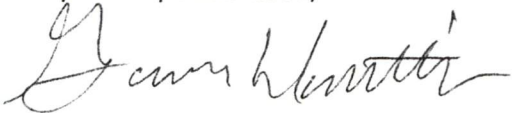
Is there evidence?

No Writ, No Waiver, No Jury, No Attorney

No, evidence

This Case Should be reverse

Respectfully submitted,

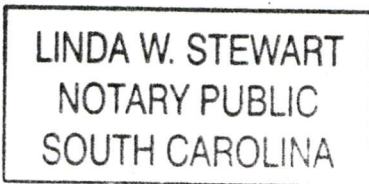


Sworn to before me

8 February 2016



My commission expires
1 October 2019



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THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEAL
APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

J.C. Nicholson, Judge

CASE NO. 2015-CP-10-3372

Gernaris Hamilton.....Appellant

v

Henry Scott Sr.....Respondent

Appellant No. 2015-002039

CERTIFICATE OF COUNSEL

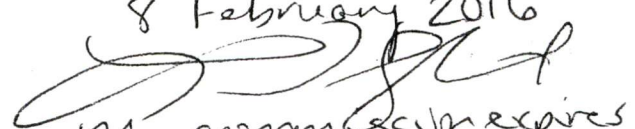
The undersigned certified that this final brief complies with rule 211(b), SCACR.



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Appellant

LINDA W. STEWART
NOTARY PUBLIC
SOUTH CAROLINA

Sworn to before me
8 February 2016

my commission expires
1 October 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. NICHOLSON CIRCUIT JUDGE

Case no. 2015-002039

Garnaris Hamilton.....Appellant,

v.

Henry Scott, Sr.....Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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March 22, 2016

TABLE OF CONTENTS

Residential Lease..... 1-5
Return filed July 7, 2015..... 6-7

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 initiated 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.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

GARNARIS HAMILTON)

Plaintiff- Appellant)

-versus-)

HENRY SCOTT, SR.)

Defendant - Respondent)

RETURN

FILED IN
CHARLESTON COUNTY
JUL 07 2015
SMALL CLAIMS COURT

THIS is an appeal from the Charleston County Small Claims Court, North Charleston Division.

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.

An attachment to the complaint listed various items of personal property alleged to be improperly disposed of by Scott, the landlord.

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.

Scott requested a jury trial in his answer but the demand was waived after he obtained counsel.

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.

FILED
2015 JUL 08 AM 11:17
JULIE J. ARNSTRONG
CLERK OF COURT

7-21-15

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.

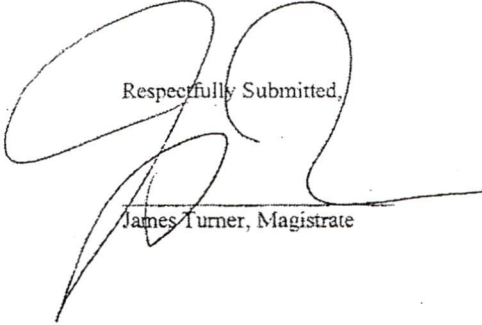
Emily Hamilton testified that she cleaned the property for Scott. She testified that Hamilton appeared and did not want to recover anymore items left at the premises. She described the items as trash. Emily Hamilton did not observe any of the items that the Plaintiff Hamilton claimed to be missing.

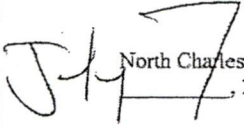
Conclusions

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.

A handwritten signature in black ink, appearing to read "Bruce A. Berlinsky", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

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

March 22, 2016