

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Donald B. Hocker, Circuit Court Judge

Appellate Court Case No. 2016-002177
Circuit Court Case No. 2016-CP-32-1968

Gerald J. Nagy, Appellant
v.
Bob Rice Realty, Inc., Respondent

FINAL BRIEF OF APPELLANT

Gerald J. Nagy
Mail Stop 149
911 Old Barnwell Road
West Columbia, South Carolina 29170
(803) 808-3438
Pro Se

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I.
INTRODUCTION

This case appeals an order of the Circuit Court in *Appeal From Magistrates Court* (R.pp.09-10) Circuit Court Case #2016-CP-32-1968, which was filed based on a Magistrate ruling in Civil Case #2016-CV-1060854. This specifically is about the monetary award in the judgment rendered by the Circuit Court on the initial appeal.

Appellant prays that this Court consider the following Issues on Appeal, and grant the requested relief:

II.
STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court judge fail to fully consider all of the Terms and Conditions included in the Residential Lease Agreement (R.pp.33-36) between Appellant and Respondent?
2. Did the Circuit Court judge fail to fully consider the statutory compensation allowed under **S.C. Code §27-40-910(h) - Retaliatory conduct prohibited?**

III.
STATEMENT OF THE CASE

Since August of 1982 Appellant had been renting a residential property from Bob Rice Realty Inc. The principle, Mr. Robert Rice, passed away and the operations were assumed by his heirs, with Terri Lynn McLaughlin being appointed as Property Manager and Sales Broker.

In October of 2013, Appellant received a letter (R.pp.37-38) from Respondent indication that the monthly rent would be increased effective January 01, 2014, and that Respondent would like to execute a lease agreement. Some time after receiving this letter, Appellant visited

Respondents business office to introduce himself and get a copy of the proposed lease.

Appellant was told it was not available at that time, but one would be mailed in the near future.

As of December 31, 2013, Appellant had not received a lease agreement, was remitting the increased rent for January, 2014, and sent an mail to Respondent stating same. Respondent replied indicating a lease would be forwarded forthwith. Within a few days Appellant received from Respondent an unsigned Residential Lease Agreement (R.pp-33-36) and executed it. Beginning January 01, 2014, Respondent accepted, on a monthly basis, rent from Appellant without reservation. In the second paragraph (R.p.33) the lease states:

"Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions contained herein, the dwelling located at 300 Timber Ridge Dr., W. Cola. SC 29169 for the period commencing on the 1st day of January, 2014, and thereafter until the 31st day of December, 2014, at which time the Lease Agreement shall automatically renew each year unless terminated in writing." (emphasis added)

Appellant continued to remit all rents on or before the due dates. Based on the terms, the lease automatically renewed on January 01, 2015. On July 08, 2015, Respondent sent Appellant a letter (R.p.39) requesting Appellant vacate the premises no later than September 30, 2015.

On August 18, 2015, Appellant sent Respondent a Notice (R.p.40) stating it was Appellants position a valid lease was in effect, but Appellant would try to vacate prior to the end of the current lease term.

On October 28, 2015, Appellant received an email (R.p.41) from Respondent tacitly acknowledging both the existence of the lease and the term. Appellant received no further correspondence from Respondent.

S.C. Code §27-40-240(b)(3) states in part:

...B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when: ... (3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt. (emphasis added)

As of December 1st, 2015, Appellant had received no such notice from Respondent as required by the lease and as prescribed by law. At that time, Appellant was aware the lease had an automatic renewal clause and initially wanted to remain for only two more months, until March 01, 2016.

On December 21, 2015, Appellant sent an email (R.p.42) to Respondent requesting a two month extension. Appellant received no response regarding his request and governed his actions based on the automatic renewal clause in Respondents lease (R.p.33).

On February 22, 2016, Respondent sent Appellant a letter (R.p.43) stating Respondent wanted the residence vacated effective March 01, 2016.

On February 29, 2016, Appellant sent Respondent an email (R.p.44.lower email) stating his position that the lease renewed and was in effect. Respondent replied (R.p.44.upper email) and in that reply clearly acknowledged the existence of the written lease, but ignored the existence of the automatic renewal clause contained therein.

On March 10, 2016, Respondent filed for a *Rule To Vacate Or Show Cause* against Appellant. The Magistrate denied the action due to lack of proper process by Respondent in

their not providing Appellant proper notice based on **S.C. Code §27-40-770(b) - Periodic tenancy; holdover remedies**, which states in part:

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

On April 04, 2016, Respondent served Appellant with a 30 day notice to vacate

On May 18, 2016, filed a second time for a ***Rule To Vacate Or Show Cause***, which was served on Appellant on May 20, 2016.

On May 31, 2016, Appellant filed his ***Answer And Counterclaim*** (R.pp.05-08).

On June 02, 2016, a hearing was held before Judge Albert J. Dooley, III, in Lexington County Magistrates Court. In the course of the hearing, Respondent claimed they never received a signed copy of the Residential Lease Agreement (R.pp.33-36) and therefore there was no lease was in effect. Respondent did acknowledge under oath the Residential Lease Agreement that Appellant introduced into evidence was in fact, authored by them. Appellant argued that a valid lease was in effect based on **S.C. Code §27-40-320(a)** which reads:

"If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord."

Appellant showed that since January of 2014, Respondent has accepted monthly rent checks from Appellant without reservation. This was not denied by Respondent. Regardless, the Magistrate Judge found in favor of Respondent. Please note, a written and clocked copy of the Magistrates ruling was never sent to Appellant. In his orally delivered ruling, the Judge did not

directly address whether or not in his opinion the lease was ever in effect, but did rule that the lease was no longer in effect, and cited S.C. Code §27-40-320(c) which reads:

"If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year."

Appellant argued that this section applied to only the term, and does not alter the automatic renewal clause. The Judge refused to hear any arguments pertaining to the counterclaims, although they were part of Appellants initial answer to the Magistrates Court. Please note that in the *Magistrates Return To Civil Appeal* (R.pp.11-14) based on the appeal filed (see next paragraph), the Magistrate did not provide an actual transcript of the proceedings in the trial pursuant to **Rule 18(b) SCRCP**, but rather a synopsis.

On June 02, 2016, Appellant filed an appeal (R.pp.09-10) with the Lexington County Court Of Common Pleas. Subsequent to that filing, the Magistrate held a bond hearing wherein it was agreed by both Appellant and Respondent that a monthly bond would be paid directly to Respondent by Appellant in an amount equal to the then current rent amount.

On September 20th, 2016, the *Appeal From Magistrates Court* was heard before the Honorable Donald B. Hocker. Respondent was not present, choosing to ignore the proceedings. In the course of the hearing (R.pp.15-32) the Judge reversed the ruling of the Magistrate (R.p.04) upholding the validity of the lease, awarded Appellant the amount of \$150.00 for the Circuit Court filing fee, but failed to allow for further awards.

As mentioned in the course of the appeal proceedings (R.pp.23-24), the lease (R.p.33) states, in the third bullet point under the second paragraph:

"As an incentive to Tenant to make rent payments by the first of the month and for being responsible for all minor maintenance of the premises, a pre-payment

discount in the amount of \$25.00 may be deducted from the above rental amount each month."

When Appellant and Respondent entered into the lease, there was a verbal agreement between Appellant and Respondent that Appellant would pay the full rent due, including the \$25.00 per month, and if and when any repair expenses were incurred, Appellant would adjust the following months rent accordingly and send Respondent an up-to-date accounting.

The first time Appellant availed himself of the rental credit for repair expenses incurred in February of 2015, the credit was denied (R.p.45).

Within the *Answer And Counterclaim* (R.pp.06-07) under Summary Court Civil Case #2016-CV-1060854 on which this is initially based, Appellant asserted the lease (R.p.33) contained a clause entitling Appellant to a \$25.00 credit per month for each and every month the rent was received on or before the due date, and that this credit was for any minor repair expenses incurred by the tenant (Appellant). At the time of the Circuit Court appeal hearing, the accrued amount was \$800.00.

Under S.C. Code §27-40-910(h) - Retaliatory conduct prohibited which reads in part:

...(h) Any landlord who acts in retaliation against the tenant for engaging in protected conduct is liable for damages up to three month's rent or treble the actual damages sustained by the tenant, whichever is greater, and reasonable attorney's fees. Nothing in this section may be construed to prohibit an action for damages after a landlord has recovered possession of the dwelling unit in subsection (c), provided the ejectment was primarily in retaliation against the tenant's protected conduct.

The monthly rental amount was \$900 throughout the course of all three actions.

IV. ARGUMENT

1. In reversing the ruling of the Magistrate, the Honorable Judge Hocker essentially ruled the Residential Lease Agreement (R.pp.33-36) was in effect. As such, the \$25.00 per month credit allowed therein as an incentive to make timely payments and to be used to make minor repairs, is due to Appellant based on the terms of the lease and the oral agreement between the parties.
2. Respondent has repeatedly engaged in retaliatory conduct against Appellant:
 - a. Demanding Appellant vacate premises shortly after Appellant attempted to avail himself of repair credits allowed under the lease.
 - b. Filing an action for possession after both admitting to the existence of a lease but failing to properly terminate said lease as required both by the terms of the lease and by State Law, this first action being denied by the Magistrate.
 - c. Filing a second action for possession, again Appellant ultimately prevailing on appeal.

The Circuit Court Judge failed to fully consider remedies under **S.C. Code §27-40-910(h) - Retaliatory conduct prohibited**, which reads in part:

Any landlord who acts in retaliation against the tenant for engaging in protected conduct is liable for damages up to three month's rent...

This issue was not allowed to be raised during the Summary Court trial as the Magistrate had already ruled in favor of Respondent.

V. SUMMARY AND PRAYER

In summary, it is abundantly clear Appellant has acted in good faith and has gone to extreme lengths to comply with the terms of the agreements between the parties. It is also

abundantly clear Respondent has acted in total disregard to both the agreement between the parties, State Law, and Respondents responsibilities thereunder.

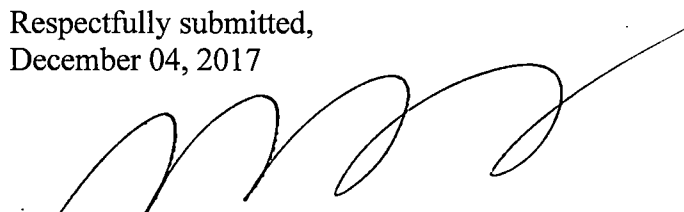
Insofar as the Circuit court has reversed the Magistrate and ruled the lease in question was both valid and in force, Appellant believes he is entitled to be refunded the repair credit amounts called for in said lease, that amount being \$800.00 through the date of the Circuit Court ruling.

Appellant has ultimately prevailed in two different legal actions brought by Respondent, both of which have taken a severe toll on Appellant in terms of time, lost earnings, and stress. While Appellant believes he could make an argument for lost earnings and claim much higher damages, this issue was not raised in the initial trial nor on appeal. However, Appellant does believe he is entitled to an amount equal to three months rent, that total being \$2,700.00, for the retaliatory actions brought by Respondent while Appellant was engaging in protected conduct.

Appellant has also incurred direct expenses for various mailings (postage charges, certified mail charges, and return receipt charges), along with cost associated with filing this appeal, these amounts totaling in excess of \$300.00.

Therefore, Appellant respectfully requests that this Honorable Court find in favor Appellant and award a total amount of \$3,800.00.

Respectfully submitted,
December 04, 2017



Gerald J. Nagy
Mail Stop 149
911 Old Barnwell Road
West Columbia, South Carolina 29170
(803) 808-3438
Pro Se