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STATE OF SOUTH CAROLINA Court of Appeals

CIVIL CASE NUMBER

Creighton Montgomery, APPELLANT,

IN THE COURT OF APPEALS

VS.

MOTION AND AFFIDAVIT FOR STAY/SUPERDEDEAS

Sandy Ferguson, Property Manger, of Walden at Dorchester, LLC d/b/a The Legends of Charleston, RESPONDANT.

File No. _____

Creighton Montgomery, appellant filed an appeal to the Circuit Court on February 16, 2018 from the application for Ejectment filed in the Magistrate's Court by Landlord, for improper service of eviction and wrongful eviction as rent was already paid prior to filling for eviction pursuant to SECTION 27-37-130.

On February 23, 2018 Bond to Stay Execution hearing was held in which the judge violated SECTION 27-40-800.

Undertaking on appeal and order staying execution. (Read subsection e below)

(d) If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the circuit court. Upon the motion and upon notice to all interested parties, the court shall hold a hearing as soon as is feasible after the filing of the motion and determine what modifications, if any, are appropriate. No judgment for ejectment may be executed pending a hearing on the motion, provided the tenant complied with the terms of the undertaking of execution upon the undertaking.

I was not able to dispute or file a motion due to I had until Monday February 26, 2018 to post bond to the landlord. Which is a violation of SECTION 27-40-800. Undertaking on appeal and order staying execution. (Read subsection e below)

(e) If the tenant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the landlord, shall issue a warrant of ejectment to be executed pursuant to Section 27-37-40 of the 1976 Code.(f)(1) Upon appeal to the Supreme Court or to the court of appeals, it is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking.

(2) The tenant's failure to comply with the terms of the undertaking entitles the landlord to execution of the judgment for possession in accordance with the provisions of subsection (e) of this section.

On Febuary 27, I went to the leasing office to pay what the judge ordered and my payment was refused due to it was past Febuary 26, 2018, I stated to the landlord that I had 5 days to post bond and I was well within my 5 days, landlord still refused and filled with a court on February 28,2018 a motion for dismissal and writ evict stating I refused to pay. On March 1, 2018 I was severed by Sheriff with all documentation. I would like to further, state that payment of the bond to the landlord violates the following and should be to the court :

In residential landlord actions, the filing of a bond stays the execution of judgment pending the outcome of an appeal. (§ 27-40-800).

In instances in which a bond must be paid in any civil proceeding, the bond should be paid to the clerk of court of the county in which the magistrate holds office. (§§ 15-1-230 and 15-1-260).

STATE OF SOUTH CAROLINA)
COUNTY OF DURHAM)

VERIFICATION

Kendra Montgomery and _____, being duly sworn, say that they are the Petitioners herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters they believe them to be true.

SWORN to and Subscribed before me

this 2nd day of March, 2018

Ashton Holloway
Notary Public for South Carolina

My Commission expires: 03/19/2019

Kendra Montgomery
Signature of Petitioner

Signature of Petitioner

