

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2018-002155

The Housing Authority of the City of Charleston

Respondent

v.

Katrina Brown

Appellant

RECEIVED
MAY 31 2019
SC Court of Appeals

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2016CV1010700386
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE

City Of Charleston Housing
Authority
183 President Street
Charleston, SC 29403
(843) 720-3988

PLAINTIFF(S)

Vs

Katrina Brown
2214-A Sunnyside Drive
Charleston, SC 29403

DEFENDANT(S)

Upon the application of the Plaintiff(s) listed above, which states:

- ☐ TENANT HAS FAILED TO PAY RENT WHEN DUE OR DEMANDED.
☐ THE TERMS OF THE TENANCY OR OCCUPANCY HAVE ENDED
☒ THE TERMS OR CONDITIONS OF THE LEASE HAVE BEEN VIOLATED.

You the defendant(s) or lessee(s) of the premises located at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 or contact the: Charleston City Magistrate Court, 995 Morrison Drive, P. O. Box 941, Charleston, SC 29403, (843) 724-6719, within ten (10) days excluding date of service, for the purpose of showing why you and all occupants should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Wednesday, March 02, 2016

A. McCarty
JUDGE, Charleston City Magistrate

Personally appeared before me, the undersigned deponent, being duly sworn, says that he attempted to serve the Rule to Vacate or Show Cause on Katrina Brown on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE
1. 3/2/16		<u>me</u>	3/4/16
2. _____			TIME OF SERVICE _____
3. _____			SETTLED/DATE _____
			VACANT/DATE _____

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

Postel - Her

Sworn to and subscribed before me
This 4 day of March, 2016.

W. Barash
NOTARY PUBLIC OR JUDGE

J. M. Campbell
SIGNATURE OF SERVER

ON _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

2016CV1010700386
MAGISTRATE CASE NUMBER

ORDER

CITY OF CHARLESTON HOUSING)
AUTHORITY)

VS)

KATRINA BROWN)
DEFENDANT)

Comes now, Jennifer B. McCoy, Magistrate in and for Charleston County, South Carolina, and hereby makes the following findings of fact and conclusions of law.

The City of Charleston Housing Authority ("Housing Authority") most recently entered into a lease agreement ("Agreement") with Defendant Katrina Brown on December 16, 2015. This Agreement provided for Defendant to occupy 2214-A Sunnyside Drive, Charleston, SC 29403 along with three other occupants: Rashauna Brown, Anthony Cobbs (correctly "Cobb"), and Janique Richardson. (See Agreement, Plaintiff's Exhibit 1.) The Housing Authority's Application for Eviction filed with this court set forth the following grounds – "Dwelling Lease/Lease Violation-Criminal Activity." (See Complaint.) Attached to the Complaint was also a letter dated January 29, 2016, from the Housing Authority to Defendant containing the 30-day notice of termination for violation of lease – and outlining the clause sections they alleged she violated, including 5.c, 5.d, 5.e, 5.f, 16.n, and 16.u. Most importantly, clause 5.f provides that "neither the resident nor any household member, guest or other persons under the resident's control shall engage in any violent or drug related activity on or off the premises. Clause 16.n of the Agreement provides that "[t]he landlord shall not terminate or refuse to renew the Lease other than for serious or repeated violation of material terms of the Lease, such as, but not limited to, the following: ... n. any violent or drug-related criminal activity on or off the premises, not just on or near the premises." (See Letter, Plaintiff's Exhibit 2, and Agreement, Plaintiff's Exhibit 1.)

During the hearing held on March 16, 2016, the Housing Authority called Detective Jason Jarrell of the City of Charleston Police Department as a witness. Detective Jarrell testified that the Defendant's son, Anthony Cobb was arrested on January 13, 2016 in conjunction with allegations of unlawful carrying of a pistol and alleged involvement in an attempted armed robbery which had recently taken place in the area. According to Detective Jarrell, Mr. Cobb gave a post-Miranda confession to the attempted armed robbery after being placed under arrest for the unlawful carrying charge.

The Defendant, Katrina Brown, then testified that all the allegations had occurred off the premises of the Housing Authority and that her son, Mr. Cobb, is still held in the Charleston County Jail on bond for the charged offenses. She further testified that, if he is able to post his bond, their plan is for him to stay at her mother's (his grandmother's) house and to no longer reside with her and her other young child at the Housing Authority dwelling. No other witnesses testified for the Plaintiff or Defendant.

ORDER

It is this court's opinion that evictions based on the criminal activity provisions of the housing lease agreements must be determined on a case-by-case basis. Pursuant to the testimony presented in court, 24 C.F.R. § 966.4, as well as the distinguishable facts from the United States Supreme Court's decision in Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125, 122 S. Ct. 1230, (2002), I do not find for an eviction against Katrina Brown under these facts as presented. The City of Charleston Housing Authority may take measures to require removal of Mr. Cobb as a household member, pursuant to their policies and applicable law.

This the 31st day of MARCH, 2016.

Respectfully submitted,



Jennifer B. McCoy, Magistrate Judge
County of Charleston

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-2230

The Housing Authority of the City of Charleston

Katrina Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

See Attached Order Granting Plaintiff's Motion for Remand.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order.		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Date _____

ROA - 006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
The Housing Authority of the City of Charleston,	)	
	)	ORDER GRANTING PLAINTIFF'S
Plaintiff-Appellant,	)	MOTION FOR REMAND
	)	
vs.	)	
	)	
Katrina Brown,	)	
	)	
Defendant-Respondent.	)	Civil Action No.: 2016-CP-10-2230
	)	

This matter comes before the Court pursuant to The Housing Authority of the City of Charleston's appeal of the Magistrate Court's decision. Both parties to this matter were present in court with their respective counsel. This Court has had the opportunity to review the submissions of the parties, the return of the Magistrate, and to consider the arguments of counsel.

SCOPE OF REVIEW

The standard which the Circuit Court applies to an appeal from a Summary Court follows:

Upon hearing the appeal, the Appellate Court shall give judgement according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all of the parties and for errors of law or fact.

Bowers v. Thomas, 373 S.C. 240, 244, 644 S.E. 2d 751, 753 (S.C. Ct. App. 2007).

Section 18-7-170 of The South Carolina Code of Laws, 1976, as amended, provides that on appeal from Magistrate's Court, the Circuit Court may make its own findings of fact. Parks v. Characters Night Club, 345 S.C. 484, 490, 548 S.E. 2d 605, 608 (S.C. Ct. App. 2001).

R3?

FACTS

The Lease Agreement governing this matter was signed on December 16, 2015, by Katrina Brown for 2214-A Sunnyside Drive. Listed on the lease are Katrina Brown, Janique Richardson, and Anthony Cobbs. A subsequent lease was signed by Mrs. Brown on February 1, 2016, listing the same three individuals.

A Charleston Police Department incident report for trespass was generated on January 14, 2016. Officers responded to 1 Cool Blow Street in reference to an armed robbery. Anthony Cobb, Mrs. Brown's minor son, a resident at the Sunnyside Drive location, was later arrested and charged with Unlawful Carrying of a Pistol and admitted to the Attempted Armed Robbery in conjunction with the incident at 1 Cool Blow. As Mr. Cobb is a resident of the Sunnyside Drive apartment, this is a breach of the Dwelling Lease Agreement and Mrs. Brown was rightfully subject to eviction.

The details of the Magistrate level hearing are outlined in the Return prepared by the Honorable Jennifer McCoy, which is already a part of the Court's file. This includes testimony by Detective Jarrell that Mr. Cobb confessed to the attempted armed robbery and testimony from Mrs. Brown that Mr. Cobb was in fact a resident on the premises, although he was being held at the Charleston County Detention Center at the time of the hearing. In spite of Mrs. Brown's testimony that Mr. Cobb would not be residing with her, she listed him as a resident on the February 1 lease, which was executed two weeks after the armed robbery incident.

FINDINGS

The controlling case in this matter is *The Department of Housing and Urban Development vs. Rucker*. 535 U.S. 125 (2002). In *Rucker*, the Supreme Court found that a public housing

1232

agency has the authority to evict a tenant under similar circumstances. The Supreme Court conducted a fairly exhaustive review of the relevant statute and determined, notwithstanding potential harsh results on tenants, the plain language of the statute vested a public housing agency with the authority to evict a tenant under circumstances similar to the case at bar. This Court is certainly cognizant of the arguably inequitable and unfortunate results of a strict interpretation of the statute. The undersigned, on a strictly personal level, finds it unsettling that a hard-working mother, entirely innocent, could be evicted from her residence based upon the immature and asinine transgressions of a household resident. However, public policy, as advanced by the Legislature and the Supreme Court, recognizes that drug activity and violent crime is a plague on public housing communities. Therefore, this legislation was enacted to potentially curb this illegal activity. Whether or not the subject mechanism is effective in that regard is a debate for another date and time. Quite simply, it is a tool of public policy enacted by the Legislature and found acceptable by the Supreme Court.

After a review of the record, this Court cannot find how the instant case is substantively dissimilar from the factual pattern in *Rucker*. The Order of the Magistrate references "distinguishable facts" from *Rucker* but fails to articulate what those distinguishing characteristics may be.

THEREFORE, the case is remanded to the Summary Court for a ruling consistent with the Supreme Court decision in *Department of Housing and Urban Development vs. Rucker*. Id. The Magistrate may conduct an additional evidentiary hearing or rely upon the previous record.

The Housing Authority of the City of Charleston vs. Katrina Brown: 2016-CP-10-2230

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Robin B. Stilwell', written over a horizontal line.

ROBIN B. STILWELL

January 11, 2017
Greenville, South Carolina

2017-CP-10-2711

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

2016CV1010700386
MAGISTRATE CASE NUMBER

CITY OF CHARLESTON HOUSING)
AUTHORITY)

ORDER UPON REMAND

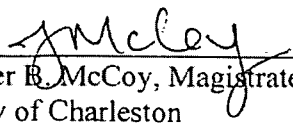
VS)

KATRINA BROWN)
DEFENDANT)

The magistrate court is in receipt of the Circuit Court's Order dated January 11, 2017, by the Honorable Robin B. Stilwell, remanding the above-referenced matter to the lower court for a ruling consistent with the United States Supreme Court's decision in Department of Housing & Urban Development v. Rucker, 535 U.S. 125, 122 S. Ct. 1230, (2002). Based on the higher court's analysis of that decision, this court now finds for an eviction. Plaintiff may proceed with filing Second Papers.

This the 30 day of January, 2017.

Respectfully submitted,



Jennifer R. McCoy, Magistrate Judge
County of Charleston

FILED
2017 JUL 31 PM 2:15
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

2017-CP-10-2711
2016CV1010700386
MAGISTRATE CASE NUMBER

CITY OF CHARLESTON HOUSING)
AUTHORITY

VS)

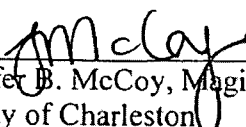
KATRINA BROWN)
DEFENDANT

AMENDED ORDER

This court is in receipt of Defendant's letter requesting a Motion to Alter/Amend/Clarify its Judgment entered by Order of this court on January 30, 2017. Pursuant to Rule 19 of the *South Carolina Magistrates Court Rules*, the January 30th Order is hereby VACATED allowing both Plaintiff and Defendant to brief this court on the issues relevant to either side, specifically limited to Circuit Court's Order regarding "distinguishable facts" between the *Dept. of Housing and Urban Development vs. Rucker* case. **Briefs must be received in this court no later than February 24th, 2017.** A final judgment on remand by this court will be issued thereafter.

This the 10th day of February, 2017.

Respectfully submitted,



Jennifer B. McCoy, Magistrate Judge
County of Charleston

FILED
2017 JUL 31 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT

The South Carolina Court of Appeals

The Housing Authority of the City of Charleston,
Respondent,

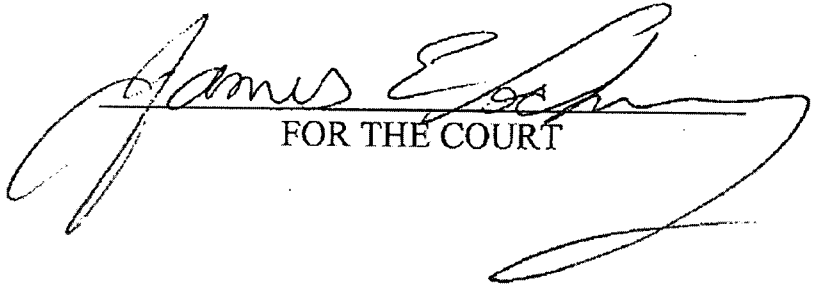
v.

Katrina Brown, Appellant.

Appellate Case No. 2017-000292

ORDER

Appellant has filed a motion to hold this appeal in abeyance and remand to the magistrate's court for further proceedings. Because the circuit court order from which appeal was taken is not immediately appealable under section 14-3-330 of the South Carolina Code (2017), we dismiss this appeal. The remittitur will be sent as provided by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc: Matthew M. Billingsley, Esquire
Adam Protheroe, Esquire
Theodore Parker, III, Esquire

FILED

March 31, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

2016CV1010700386
MAGISTRATE CASE NUMBER

CITY OF CHARLESTON HOUSING)
AUTHORITY)
VS)
KATRINA BROWN)
DEFENDANT)

SECOND AMENDED ORDER

FILED
2017 JUL 31 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT

This court is in receipt of the Order of the South Carolina Court of Appeals dismissing the appeal to that court pursuant to SC Code 14-3-330. Prior to the appeal, Defendant in this case moved to Alter/Amend/Clarify the judgment entered by Order of this court on January 30, 2017. Pursuant to Rule 19 of the *South Carolina Magistrates Court Rules*, the January 30th Order is hereby VACATED, allowing both Plaintiff and Defendant to brief this court on the issues relevant to either side, specifically limited to Circuit Court's Order regarding "distinguishable facts" between the *Dept. of Housing and Urban Development vs. Rucker* case. **Briefs must be received in this court no later than April 21, 2017.** A final judgment on remand by this court will be issued thereafter.

This the 7th day of April, 2017.

Respectfully submitted,



Jennifer B. McCoy, Magistrate Judge
County of Charleston

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CITY OF CHARLESTON HOUSING)
AUTHORITY, Plaintiff)
VS)
KATRINA BROWN, Defendant)

COURT OF COMMON PLEAS
2016-CP-10-2230
MAGISTRATE CASE NUMBER
2016CV1010700386

FINAL ORDER UPON REMAND

FILED
MAY 16 PM 12:59
CLERK OF COURT
Clocked in date Canceled

The magistrate court is in receipt of the Circuit Court's Order dated January 11, 2017, by the Honorable Robin B. Stilwell, remanding the above-referenced matter to the lower court for a ruling consistent with the United States Supreme Court's decision in Department of Housing & Urban Development v. Rucker, 535 U.S. 125, 122 S. Ct. 1230 (2002). Based on Judge Stilwell's analysis of that decision, as well as my review of both memoranda of law submitted by the parties on remand, and a re-reading of the Rucker decision, this court now finds for an eviction.

FACTS

The City of Charleston Housing Authority ("Housing Authority") most recently entered into a lease agreement ("Agreement") with Defendant Katrina Brown on December 16, 2015. This Agreement provided for Defendant to occupy 2214-A Sunnyside Drive, Charleston, SC 29403 along with three other occupants: Rashauna Brown, Anthony Cobbs (correctly "Cobb"), and Janique Richardson. (See Agreement, Plaintiff's Exhibit 1.) The Housing Authority's Application for Eviction filed with this court set forth the following grounds – "Dwelling Lease/Lease Violation-Criminal Activity." (See Complaint.) Attached to the Complaint was also a letter dated January 29, 2016, from the Housing Authority to Defendant containing the 30-day notice of termination for violation of lease – and outlining the clause sections they alleged

JBM/1

she violated, including 5.c, 5.d, 5.e, 5.f, 16.n, and 16.u. Clause 5.f provides that "neither the resident nor any household member, guest or other persons under the resident's control shall engage in any violent or drug related activity on or off the premises. Clause 5.e. states "neither the resident nor any household member, guest, or other persons under the resident's control shall engage in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or Authority employees." Clause 16.n of the Agreement provides that "[t]he landlord shall not terminate or refuse to renew the Lease other than for serious or repeated violation of material terms of the Lease, such as, but not limited to, the following: ... n. any violent or drug-related criminal activity on or off the premises, not just on or near the premises." (See Letter, Plaintiff's Exhibit 2, and Agreement, Plaintiff's Exhibit 1.)

During the hearing held on March 16, 2016, the Housing Authority called Detective Jason Jarrell of the City of Charleston Police Department as a witness. Detective Jarrell testified that the Defendant's son, Anthony Cobb was arrested on January 13, 2016 in conjunction with allegations of unlawful carrying of a pistol and alleged involvement in an attempted armed robbery which had recently taken place in the area. According to Detective Jarrell, Mr. Cobb gave a post-Miranda confession to the attempted armed robbery after being placed under arrest for the unlawful carrying charge.

The Defendant, Katrina Brown, then testified that all the allegations had occurred off the premises of the Housing Authority and that her son, Mr. Cobb, is still held in the Charleston County Jail on bond for the charged offenses. She further testified that, if he was able to post his bond, their plan was for him to stay at her mother's (his grandmother's) house and to no longer reside with her and her other young child at the Housing Authority dwelling. No other witnesses testified for the Plaintiff or Defendant.

ORDER

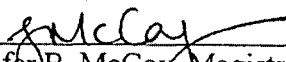
It is without contention that the offender in question, the tenant's son, was statutorily a person "under the tenant's control" based on the Supreme Court's interpretation of 42 U.S.C. Section 1437d(l)(6). Department of Housing and Urban Development v. Rucker, 122 S. Ct. 1230 (2002). What appears to be at issue is whether the criminal act that he was charged with qualifies for his mother's eviction under the same federal statute.

In the initial review of the case, this court focused on clauses 5.f. and 16.n., which both prohibit "drug-related" activity from Housing tenants. Upon further review, it is apparent that clause 5.e. prohibits "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or Authority employees." See Lease Agreement. 42 U.S.C. Section 1437(d)(l)(6) provides that each "public housing agency shall utilize leases which ... provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." Rucker, citing 42 U.S.C. Section 1437(d)(l)(6). It is the opinion of this court that, even though the underlying facts giving rise to the Rucker decision dealt with drug-related crimes, the Supreme Court's decision in Rucker is still applicable to the case at hand. The first portion of the statute clearly specifies "any criminal activity that threatens...other tenants." Id (emphasis added). The intent behind these anti-criminal conduct clauses is to keep the housing projects safe. While the statute does not require eviction under these circumstances, Congress has vested that decision within the local housing authorities who are in the best position to judge when it is appropriate. It is, in fact, a strict liability standard, as recognized by the Supreme Court in

Rucker. See 122 S. Ct. 1230 at 134. Based on the testimony and evidence presented at trial, I find the Housing Authority of the City of Charleston became well aware of the underlying criminal matter before determining to pursue eviction proceedings against Ms. Brown. While I agree with Judge Stilwell on finding it difficult on a personal level to hold Ms. Brown responsible for her son's actions, I must follow binding precedent and find for an eviction.

This the 15th day of May, 2017.

Respectfully submitted,



Jennifer B. McCoy, Magistrate Judge
County of Charleston

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

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER: 2017-CP-10-02711

City of Charleston Housing Authority

Katrina Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Al Shree Lee

Judge Code 2118

Date

4/17/2018

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Adam Protheroe

Jacqueline Dixon Phillips

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
City of Charleston Housing Authority,)
Plaintiff,)
v.)
Katrina Brown,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Docket No.: 2017-CP-10-02711

ORDER

FILED
2018 APR 24 AM 8:55
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before the Court on an appeal filed on May 31, 2017 by Appellant Katrina Brown ("Brown") from a decision of the magistrate court granting an eviction. A hearing on the matter was held on September 5, 2017. Present at the hearing were Adam Protheroe, Esquire, attorney for City of Charleston Housing Authority ("CHA"), and Jacqueline Dixon Phillips, Esquire, attorney for Brown. This is the second appeal in this matter.

CHA filed an action to evict Brown in magistrate court on March 1, 2016. A hearing on the eviction was conducted on March 16, 2016 during which several witnesses testified. The magistrate issued an order denying the eviction which was subsequently appealed to the circuit court. A hearing on the appeal was conducted in January 2017. On January 11, 2017, the circuit court remanded the matter to the magistrate for additional consideration of the U.S. Supreme Court decision in *Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002). On remand the magistrate considered all of the evidence in light of the *Rucker* decision and issued an Order on May 15, 2017 granting the eviction. This appeal followed.¹ Brown primarily argues that the magistrate erred in ordering an eviction because CHA failed to exercise its discretion in determining whether eviction was appropriate in light of the facts and the decision in *Rucker*.

S.C. Code Ann. § 18-7-170 provides the standard of review on appeal from the judgment of a magistrate. "Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits.

¹ For a detailed recitation of the facts and the orders issued by the magistrate and the circuit court, reference is made to the Magistrate Return and the Orders contained therein.

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In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact."

The undisputed facts are as follows: CHA entered into a lease agreement ("Lease") with Brown on December 16, 2015 for her to occupy 2214-A Sunnyside Drive in Charleston, South Carolina. Under the Lease, Brown occupied the premises with three other persons: Rashauna Brown, Anthony Cobb ("Cobb"), and Janique Richardson. Brown's son, Cobb, was arrested on January 13, 2016 for unlawful carrying of a pistol. Because he fit the physical description of the suspect of an attempted armed robbery, he was questioned about that incident which took place on January 11, 2016. The attempted armed robbery occurred approximately one mile from the grounds of the housing authority. During a post-*Miranda* interview, Cobb confessed to the attempted armed robbery after his arrest on the weapons charge. During the interview, Cobb would not reveal the name of the second perpetrator involved in the attempted armed robbery.

Charleston Police Department contacted Cobb's mother, Brown. She assured the detective that her son would tell them the name of the second perpetrator. During a second interview, Cobb still refused to reveal the name. Thereafter, Brown told Cobb not to talk with police anymore.

At trial before the magistrate, Brown confirmed that all of the alleged activity took place away from CHA property and that she had no knowledge of the incidents until her son was arrested. Brown testified that if Cobb was granted a bond and released from custody, he would live with his grandmother, would not return to the apartment on CHA property, and would no longer live at the CHA dwelling.

CHA sought to evict Brown for violating Sections 5(c), 5(d), 5(e), 5(f), 16(n), and 16(u), of the Lease which prohibit "unlawful" or "criminal" conduct by residents or household members. The magistrate initially found that Brown was not in substantial breach of the Lease and denied the application for ejectment with leave for CHA to remove Cobb as a household member. Upon appeal, the circuit court remanded the matter for the magistrate to make findings consistent with *Rucker*. Without making any new findings of fact or considering any additional evidence, the magistrate considered *Rucker* and subsequently evicted Brown. This appeal followed.

Brown argues there is no evidentiary support for finding that the alleged criminal activity threatened the health, safety, or right to peaceful enjoyment of other residents or of those residing in the immediate vicinity of the housing complex. Specifically, Brown argues that the criminal activity is not drug related as in *Rucker* and therefore, CHA must prove that the criminal activity

threatens the health, safety, or right of peaceful enjoyment of other residents and those living in the immediate vicinity of the housing complex.

In *Rucker*, four separate ejectment actions were brought by the Oakland Housing Authority against its tenants whose guests or household members had engaged in drug-related criminal activity at the public housing complex. The tenants challenged the Department of Housing and Urban Development's ("HUD") interpretation of 42 U.S.C. § 1437d(1)(6). The U.S. Supreme Court in *Rucker* held that "Section 1437d(1)(6) requires lease terms that give local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug-related activity, regardless of whether the tenant knew, or should have known, of the drug-related activity." 535 U.S. at 136, 122 S. Ct. at 1236. *Rucker* does not address eviction for conduct other than drug related activity.

The Lease at issue here provides that "neither the Resident nor any household members, guest, or other person under the Resident's control shall engage in any violent or drug-related criminal activity *on or off the premises*." (Emphasis added). *Dwelling Lease Agreement* ¶5f. Paragraph 16n of the Lease Agreement states that the "Landlord shall not terminate ... the Lease other than for serious or repeated violation of material terms of the Lease, such as, ... any violent or drug-related criminal activity performed by any household members, guests, other persons under the Resident's control *on or off the premises, not just on or near the premises*." (Emphasis added). *Dwelling Lease Agreement* ¶ 16n. Based upon the evidence presented to the magistrate, it is undisputed that neither Brown nor her son Cobb engaged in any violent or drug-related criminal activity *on the premises* in violation of the Lease.

Cobb was charged by the Charleston Police Department with attempted armed robbery, which is a felony and a violent crime under S.C. Code Ann. § 16-1-60. Additionally, he was also charged with the unlawful carrying of a pistol. These were two separate charges that occurred in two separate incidents within a one week period off CHA's premises. CHA had the right to terminate the lease based upon both Paragraphs 5f and 16n.

Brown argues that the regulations interpreting the federal statute support eviction only for drug related criminal activity occurring on or off the public housing premises, and for other criminal activity which poses a threat to the community. 24 C.F.R. § 966.4(1)(2)(iii)(A) Brown advocates that the CHA lease terms prohibiting violent criminal activity on or off the premises is "not rationally related to a legitimate housing purpose" and therefore runs afoul of the prohibition

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against unreasonable terms in such leases contained in 42 U.S.C. § 1437d(1)(1). See *Richmond Tenants Org., Inc. v. Richmond Redevelopment & Hous. Auth.*, 751 F.Supp. 1204 at 1205 (E.D. Va. 1990), *aff'd*, 947 F.2d 942 (4th Cir. 1991) (lease provisions making misdemeanor convictions a material breach of lease unreasonable in violation of 42 U.S.C. § 1437d(1)(1) because it could be used to evict tenant for an offense that bore no relation to the housing development).

The regulations interpreting the federal statutes clearly state that the tenant shall be obligated "to assure that no ... member of the tenant's household ... engages in any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents." 24 C.F.R. § 966.4(f)(12)(i)(A). Further, the lease shall contain provisions relating to eviction for "other good cause" which includes "criminal activity ... provided in paragraph (l)(5) of this section." 24 C.F.R. § 966.4(l)(iii)(A). Under Paragraph (l)(5), the public housing authority has authority to terminate the tenancy for criminal activity or alcohol abuse. For non-drug activity, "the lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment by other residents... or threatened the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy." 24 C.F.R. § 966.4(l)(5)(ii)(A). The tenant may be evicted for criminal activity by judicial action if the housing authority determines that the "covered person has engaged in criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction." 24 C.F.R. § 966.4(l)(5)(iii)(A).

Pursuant to the lease, CHA had the authority to terminate the lease for a serious violation of the terms of the lease such as violent criminal activity performed by a member of the household or a person under the resident's control occurring on or off the premises. As previously stated Cobb was a member of the household who was arrested for violent criminal activity (attempted armed robbery) within one mile of CHA's property. According to the testimony, as reflected in the Return, at approximately 2:00 am, the victim was at 1 Cool Blow when approached by two subjects, one of whom racked the gun in an attempt to rob the victim of a phone and wallet. The incident occurred about a mile off CHA premises but it involved acts, from which it can be inferred, created a threat to the health, safety and right to peaceful enjoyment by residents in the vicinity of CHA's property.



Brown challenges the constitutionality of the federal statute and regulations that seem to allow the eviction of "so-called 'innocent' tenants" such as herself. The U.S. Supreme Court in *Rucker* considered the same question and specifically held "that 42 U.S.C. § 1437d(l)(6) unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members ... whether or not the tenant knew, or should have known, about the activity." 535 U.S. at 130, 122 S. Ct. at 1233. Specifically, 42 U.S.C. § 1437d(l)(6) states: "Each public housing agency shall utilize leases which ... provide that ... *any criminal activity* that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." *Id.* (Emphasis added). By the terms of the statute, *Rucker* is not limited only to drug related activity. It applies to any criminal activity.

Further, the U.S. Supreme Court stated that the federal statute does not require a housing authority to evict under the circumstances provided here, but the local housing authority has been vested with the power, by Congress pursuant to the statute, to determine the circumstances under which it may exercise its authority because it is in the best position to do so. Under the statute, the housing authority has the power to evict the tenant as well as the household member. The U.S. Supreme Court in *Rucker* has interpreted the statute and authorized eviction of the tenant even in the absence of any offending behavior by the tenant or knowledge thereof. "Such 'no-fault' eviction is a common 'incident of tenant responsibility under normal landlord tenant law and practice.'" 535 U.S. at 134, 122 S. Ct. at 1235. [Citation omitted]. Strict liability maximizes deterrence and eases enforcement difficulties." *Id.*

Here, CHA became aware of the circumstances surrounding the arrest of Cobb for not one incident but two separate incidents occurring within a short period of time. CHA alone had the discretion to bring an eviction action individually against the tenant (Brown) or the household member (Cobb), or both. Additionally, the magistrate considered the argument by Brown that the offending household member could be removed from the lease and prohibited from entering the property. The magistrate also properly applied the legal standard set forth in *Rucker*.

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For the reasons stated herein, the Final Order upon Remand issued by the magistrate is
AFFIRMED.

AND IT IS SO ORDERED.



ALISON RENEE LEE

April 17, 2018
Columbia, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2017CP1002711

City of Charleston Housing Authority

Katrina Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Liantant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Alfred Lee

Judge Code 2118

Date

11/1/2018

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

City of Charleston Housing Authority,

Plaintiff,

v.

Katrina Brown,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Docket No.: 2017-CP-10-02711

ORDER ON RECONSIDERATION

This matter comes before me on a Motion to Reconsider filed by Defendant Katrina Brown ("Defendant") on May 4, 2018. The motion was filed to reconsider the Order of this Court filed on April 24, 2018. In the motion, Defendant seeks a ruling on two arguments which were raised but were not expressly ruled upon in the Order.

First, Defendant argues that City of Charleston Housing Authority ("CHA") abused its discretion by pursuing the eviction of Defendant and her minor daughter "as though that action were the only alternative rather than exercising discretion to determine whether other options were available...." Defendant cites *E. Carolina Regional Housing Authority v. Lofton*, 369 N.C. 8, 789 S.E.2d 449 (2016) to support her argument.

Lofton recites the applicable federal statutes and case law including *Rucker*. *Rucker* emphasizes that housing officials have discretion before pursuing "no-fault" evictions. The U.S. Supreme Court in *Rucker* stated that the federal statute does not require a housing authority to evict under the circumstances provided here, but the local housing authority has been vested with the power, by Congress pursuant to the statute, to determine the circumstances under which it may exercise its authority because it is in the best position to do so. The U.S. Department of Housing and Urban Development supported the exercise of discretion by each public housing authority by incorporating provisions within its regulations. See 24 C.F.R. § 966.4(l)(5)(vii)(B).

CHA did exercise its discretion and proceeded with an eviction. CHA was aware of the applicable regulations. *Rucker* provides that the housing authority is vested with the discretion to evict tenants. Eviction here did not occur automatically with an alleged violation as it did in *E. Carolina Reg. Hous. Auth. v. Lofton*. The housing authority has to make the choice to proceed with an eviction based upon the circumstances of the violation and the provisions of the lease.

and
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Under the statute and the CHA lease, the housing authority has the power to evict the tenant as well as the household member. The U.S. Supreme Court in *Rucker* has interpreted the statute and authorized eviction of the tenant even in the absence of any offending behavior by the tenant or knowledge thereof. "Such 'no-fault' eviction is a common 'incident of tenant responsibility under normal landlord tenant law and practice.'" 535 U.S. at 134, 122 S. Ct. at 1235. [Citation omitted]. Strict liability maximizes deterrence and eases enforcement difficulties." *Id.* CHA exercised its discretion and authority under the federal statute and the lease to evict the tenant (Brown) or the household member (Cobb) or both.

Second, Defendant argues that Plaintiff's authority only extends to "activity which presents a current or ongoing threat to the health, safety, or right of peaceful enjoyment of other residents of the public housing complex or those living in the immediate vicinity." Defendant reads additional words into the statute and the lease. Based upon Defendant's interpretation the CHA would not be able to evict any tenant unless the conduct complained of was a present and ongoing threat. The clear language of the statute and the lease do not support Defendant's interpretation. Cobb admittedly engaged in activity that threatened the health, safety, or right of peaceful enjoyment of the residents of the housing complex and those living in the vicinity. His activities were a threat when they occurred. The activity was a violation of the lease provisions. Whether the threat is removed does not negate the violation. The arguments made by Defendant simply repeat her arguments that CHA did not exercise discretion in determining whether to evict. Those arguments have already been discussed.

Based upon the original Order and the discussion above, Defendant's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
November 1, 2018


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FILED

2016 APR 29 AM 11:45

10-CP-10-2230

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
HOUSING AUTHORITY OF THE CITY OF
CHARLESTON

JULIE J. ARMSTRONG
CLERK OF COURT

COMMON PLEAS CASE NUMBER

2016CV1010700386

MAGISTRATE CIVIL CASE NUMBER

APPELLANT(S)

IN THE COURT OF COMMON PLEAS

VS.

NOTICE OF CIVIL APPEAL

KATRINA BROWN

RESPONDENT(S)

The plaintiff, Housing Authority of the City of Charleston hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Charleston.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 31 day of March, 2016.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

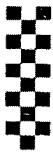
Appellant believes that an error of law was made in the Court's application of Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125, 122 S. Ct. 1230, (2002). In support of this Motion, appellant will rely upon the pleadings, the South Carolina Rules of Civil Procedure, the law of South Carolina, any affidavits and memoranda submitted by the parties, the Court records, and any Oral arguments the Court shall hear.

Dated:

4/29/16

Appellant (or his attorney)

SCCA/720 (Amended 8/1/2011)



From:

02/08/2017 16:09

#707 P.001/002



**South Carolina
Legal Services**

Balancing the Scales of Justice

received
2/8/17

Adam Protheroe, Esq.
adamprotheroe@sclegal.org

126 Associate Parkway
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Orangeburg, SC 29116
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Phone: (803) 533-0116
Fax: (803) 531-6320

February 8, 2017

Via First Class Mail and Fax to (843) 720-7133

Hon. Jennifer B. McCoy
995 Morrison Drive
Charleston, SC 29403

**RE: Housing Authority of the City of Charleston v. Katrina Brown (2016CV1010700386)
Our File No. 16-0635990**

Dear Judge McCoy:

I hope this letter finds you well. We are writing to request that your order dated January 30, 2017 finding for Plaintiff be vacated and the parties given an opportunity to file briefs and, if necessary, for a supplemental evidentiary hearing before you reach a final decision in this matter. We feel strongly that your initial decision in this matter was in line with *Rucker* and that the Circuit Court's order does not mandate reversal of your decision. We would appreciate the opportunity to present authority and additional evidence, if needed, to support our position.

We acknowledge that the Circuit Court's order remanding this case clearly permitted you to issue a decision without further hearing. However, the reversal of your decision without further hearing or, at least, an opportunity to brief the issues has placed Ms. Brown in a very difficult position when it comes to her right to further appeal. We believe that you were correct to distinguish the instant case from *Rucker* and we believe that evidence to support that distinction exists in the record. However, as the Circuit Court pointed out, those facts may not have been clearly articulated. If we are forced to pursue an appeal on the record as it exists, something we intend to do if your January 30th order stands, that lack of clarity will likely continue to be an issue. Ms. Brown's prospects for keeping her housing may suffer not because the facts or the law are against her, but because the record supporting your initial conclusion is inadequate.

Therefore, we respectfully request that you vacate your January 30, 2017 order in this case and provide the parties with an opportunity to brief their positions and for a further evidentiary hearing if one is needed to address distinctions between this case and *Rucker*. We would need to serve a notice of appeal of the Circuit Court's order by this Friday, February 10th, so unfortunately time is of the essence. One or both of us can be available for a hearing or conference call on this request if one is needed.



South Carolina
BAR FOUNDATION
Lawyers Providing Justice



Jim O. Stuckey - Chairman; Corrington Wingard - Vice Chairman; Velma McDonald-Chandler - 1st Vice Chair; Maridolores Valentin - Secretary; Angela DeAnne Rowe - Treasurer

ROA - 031



Hon. Jennifer B. McCoy
February 8, 2017
Page 2

This issue is one of great import to Ms. Brown and other public housing tenants throughout the State as we expect it is to the Housing Authority as well. Thank you in advance for your time and consideration.

With kind regards, we are

Sincerely,

Matthew M. Billingsley
Adam Protheroe
Attorneys for Katrina Brown

AP/

CC: Theodore Parker, III, Esq.
Parker Nelson & Associates, CHTD.
211 King Street, Suite 107
Charleston, SC 29401
Via fax to (843) 727-2599



Jim O. Stuckey - Chairman; Carrington Wingard - Vice Chairman; Velma McDonald-Chandler - 1st Vice Chair; Mariadobres Volentin - Secretary; Angela DeAnne Rowe - Treasurer

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-10-2230

The Housing Authority of the City of Charleston

Respondent

v.

Katrina Brown

Appellant

NOTICE OF APPEAL

Katrina Brown appeals the order of the Honorable Robin B. Stilwell dated January 11, 2017. Appellant received written notice of entry of this order on January 17, 2017.

February 9, 2017

SOUTH CAROLINA LEGAL SERVICES


Matthew M. Billingsley, S.C. Bar No. 76095

Adam Protheroe, S.C. Bar No. 78442

South Carolina Legal Services

P.O. Box 1646

Orangeburg, SC 29116

(803) 533-0116

Attorneys for Appellant

Other Counsel of Record:
Theodore Parker, III, Esq.
Parker Nelson & Associates, CHTD.
211 King Street, Suite 107
Charleston, SC 29401

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FEB 16 2017
SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-10-2230

The Housing Authority of the
City of Charleston,

Respondent,

v.

Katrina Brown,

Appellant.

MOTION TO REMAND

Appellant hereby respectfully requests that this Honorable Court hold the instant appeal in abeyance and remand this action for further proceedings before Magistrate Judge Jennifer B. McCoy. This motion is made upon the following grounds:

This appeal arises out of an action filed by Respondent on March 1, 2016 seeking to eject Appellant from her apartment in a federally-subsidized public housing complex. This matter was first heard by Magistrate Judge Jennifer B. McCoy on March 16, 2016. Judge McCoy found in favor of Appellant and denied Respondent's application for ejectment. See Exhibit A attached hereto.

Respondent appealed to the Court of Common Pleas for Charleston County where

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the matter was heard by Circuit Judge Robin B. Stilwell. Judge Stilwell, by Order dated January 11, 2017, remanded this action to Judge McCoy with directions to enter a ruling consistent with *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002), with the option for Judge McCoy to conduct an additional evidentiary hearing or rely on the previous record. See Exhibit B attached hereto. Judge Stilwell noted in his Order that Judge McCoy referenced “distinguishable facts” between the instant case and *Rucker* in her return, but failed to articulate what those facts were.

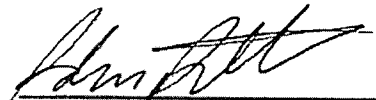
By Order dated January 30, 2017, Judge McCoy entered an Order reversing her previous decision in favor of Appellant and granting Respondent’s application for ejectment. See Exhibit C attached hereto. By letter dated February 8, 2017, Appellant requested that Judge McCoy vacate her January 30th Order and allow the parties to submit briefs and/or additional evidence. See Exhibit D attached hereto. By Order dated February 10, 2017, Judge McCoy vacated her January 30th Order and granted Appellant’s request that the parties be allowed to submit briefs. See Exhibit E attached hereto.

While Appellant believes that Judge Stilwell’s January 11th Order remanding this action to Judge McCoy was interlocutory in nature, certain language in the Order could be argued to make findings which Appellant believes constitute errors of law. Thus, out of an abundance of caution, Appellant has perfected her appeal to this Court in an effort to preserve those issues. However, Appellant

believes that remanding this action for further proceedings before Judge McCoy consistent with her February 10th Order is proper for two reasons. First, doing so would enable Judge McCoy to make findings as to whether the instant case and *Rucker* are distinguishable so that the record is made clear for any subsequent appeal. Second, Judge McCoy's ruling may resolve this matter entirely. South Carolina appellate courts have granted motions to remand for a variety of reasons similar to those raised here. E.g. *Wicker v. Anderson County Council*, 289 S.C. 479 (1986) (remanding to lower court for consideration of post-trial motions); *Diamond Jewelers of Spartanburg, Inc. v. Naegele Outdoor Advertising Co.*, 290 S.C. 260 (1985) (remanding for consideration of post-trial motions); *Clements v. Young*, 310 S.C. 73 (S.C. Ct. App., 1992) (noting that the South Carolina Supreme Court had previously remanded for reconstruction of as much of the record as necessary for appeal).

THEREFORE, Appellant respectfully requests that this appeal be held in abeyance and the matter remanded to Judge McCoy for further proceedings consistent with her February 10, 2017 Order.

WE SO MOVE:

 Feb 14, 2017
Matthew M. Billingsley, SCB No. 76095
Adam Protheroe, SCB No. 78442
South Carolina Legal Services
P.O. Box 1646
Orangeburg, SC 29116
(803) 533-0116
Attorneys for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

City of Charleston Housing Authority

Plaintiff(s)

vs.

Katrina Brown

Defendant(s)

2016CV1010700386
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

**DEFENDANT'S MEMORANDUM
OF LAW ON REMAND**

FACTS

Plaintiff filed the instant case on March 1, 2016 seeking to evict Defendant based on alleged violations of the terms or conditions of the parties lease agreement. The case was heard before the Honorable Jennifer B. McCoy on March 16, 2016. Plaintiff presented testimony that Defendant's son, Anthony Cobb, was arrested on January 13, 2016 for unlawful carrying of a pistol and that, subsequent to his arrest, he confessed to an attempted armed robbery at 1 Cool Blow Street in Charleston. Defendant testified that all the alleged conduct occurred off housing authority property, that Mr. Cobb was currently held in the Charleston County Jail, that she had no knowledge of the alleged incidents until her son was arrested, and that her plan was that Mr. Cobb would stay at his grandmother's house if he was able to post bond.

Judge McCoy found that Defendant was not in substantial breach of her lease agreement and denied Plaintiff's application for ejectment with leave for Plaintiff to remove Mr. Cobb as a household member. Plaintiff appealed to the Court of Common Pleas and the case was remanded with instructions to make findings consistent with Department of Housing and Urban Development v. Rucker, 535 U.S. 125 (2002).

ARGUMENT

In his January 11th Order remanding this case, Judge Stilwell found that Rucker was controlling and that, while this Court referred to facts which distinguished the instant case from Rucker, those facts were not articulated. While Defendant agrees with Judge Stilwell's holding that Rucker is applicable to this case, that fact alone is not dispositive for two reasons. First, unlike

Rucker, the instant case involves criminal activity which was not drug-related. Under such circumstances, Plaintiff must show that the criminal activity at issue threatens the health, safety, or right to peaceful enjoyment of other residents or of those living in the immediate vicinity of the housing complex. Plaintiff has failed to make such a showing in the instant case. Second, Rucker held that federal law authorized – but did not require – a housing authority to seek eviction of a tenant for criminal activity in which the tenant took no part and of which they had no knowledge. Instead, housing authorities like Plaintiff were entrusted with the decision as to whether to seek eviction because they were in the best position to consider a number of factors in each case. Here, there is no evidence that Plaintiff considered the circumstances of this particular case or considered whether alternatives to eviction would adequately protect the community. As a result, Plaintiff's decision was arbitrary and an abuse of the discretion conferred on it by Congress.

Interestingly, while Plaintiff points to Rucker as justification for seeking Defendant's eviction in this case, the named Plaintiff in Rucker, Pearlie Rucker, was not actually evicted despite the fact that a member of her household engaged in drug-related criminal activity on public housing property. Instead, as the Supreme Court notes, the housing authority dismissed its eviction action against Ms. Rucker after the offending household member was incarcerated and, thus, no longer posed a threat to other tenants. 535 U.S. at 128 fn 1. The similarities between Rucker and the instant case are striking in that respect. The offending household member in the instant case is also incarcerated and Defendant testified without contradiction that she intended to have him move in with his grandmother if he was able to post bond. Yet, Plaintiff continues to seek Defendant's eviction apparently in an effort to solve a problem that does not currently exist. For the reasons stated herein, Plaintiff's application for ejectment should be denied.

I. Plaintiff has failed to show that Mr. Cobb's conduct is a threat to the health, safety, or right to peaceful enjoyment of other residents or of those living in the immediate vicinity.

Rucker arose out of four separate ejectment actions brought by the Oakland Housing Authority against public housing tenants whose guests or household members had engaged in drug-related criminal activity at the public housing complex. The tenants challenged the Department of Housing and Urban Development's (HUD) interpretation of 42 U.S.C. §

1437d(l)(6) arguing that the statute does not require lease terms authorizing the eviction of innocent tenants and, if it does, the statute is unconstitutional. The United States Supreme Court rejected the tenants' arguments and held that the statute at issue unambiguously requires lease terms vesting housing authorities with the discretion to evict tenants for the drug-related criminal activity of guests or household members regardless of whether the tenant knew or should have known of the activity. 535 U.S. at 130.

That the criminal activity at issue in Rucker was "drug-related" is an important distinction between Rucker and the instant case. HUD has defined "drug-related criminal activity" as "the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug." 24 C.F.R. § 5.100. We do not understand Plaintiff to contend that Mr. Cobb's conduct was drug-related as defined by HUD and would submit that it plainly was not. However, in addition to drug-related criminal activity, the statute at issue in Rucker and regulations HUD has issued pursuant thereto also vest housing authorities with the discretion to seek to evict tenants for criminal activity "that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including [housing authority] management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises". 24 C.F.R. § 966.4(l)(5)(ii). We understand Plaintiff to contend that Mr. Cobb's conduct falls into this latter category of "other criminal activity".

The distinction between drug-related criminal activity and other criminal activity is important in this case because while the mere occurrence of drug-related criminal activity is all that is required to vest Plaintiff with the discretion to seek eviction, Plaintiff is only permitted to seek eviction where other criminal activity threatens the health, safety or right to peaceful enjoyment of other residents or of those living in the immediate vicinity. 42 U.S.C. § 1437d(l)(6); 24 C.F.R. § 966.4(l)(5)(ii). Three distinct requirements can be drawn from the statutory language authorizing evictions for other criminal activity. First, the activity must threaten health, safety, or the right to peaceful enjoyment. Second, that activity must constitute a current threat. Finally, that activity must amount to such a threat with respect to other residents of the public housing complex or those living in the immediate vicinity. Plaintiff's failure to satisfy any one of these

requirements would mean that Plaintiff had no discretion to seek Defendant's eviction in the first place. For the reasons that follow, Plaintiff can satisfy none of them.

- a. Plaintiff has failed to show that Mr. Cobb's conduct created the requisite threat to residents of the public housing complex or those living in the immediate vicinity.

Plaintiff has failed to produce any evidence to show that Mr. Cobb's conduct currently or ever posed the requisite threat to the public housing community or those living in the immediate vicinity and appears to assume that grounds for ejectment exist simply because the alleged act occurred. However, both the plain language of applicable law and decisions by numerous courts lead to the conclusion that Plaintiff's assumption is incorrect. Plaintiff is authorized to seek a public housing tenant's eviction only for 1) drug-related criminal activity on or off the public housing premises, and 2) other criminal activity which poses a threat to the community as discussed above. 24 C.F.R. § 966.4(l)(2)(iii)(A) (emphasis added).

Plaintiff may argue that, while 42 U.S.C. § 1437d(l)(6) and 24 C.F.R. § 966.4(l)(5)(ii) require PHAs to have leases which permit them to evict for non-drug-related criminal activity when such activity affects health, safety, or peaceful enjoyment of other residents or those residing in the immediate vicinity, the lease in this case prohibits violent criminal activity *on or off* the premises, not just on or near the premises. Put another way, Plaintiff may argue that the statutory and regulatory provisions cited establish the minimum lease requirements and that a housing authority is permitted to establish more stringent requirements. However, as discussed above, HUD has been clear that a PHA may terminate a public housing tenancy only for 1) drug-related criminal activity on or off the public housing premises, and 2) other criminal activity which poses a threat to the community as discussed above. 24 C.F.R. § 966.4(l)(2)(iii)(A) (emphasis added). Plaintiff's inclusion of more expansive language in its lease is improper and unenforceable in light of the limited authority to evict granted by HUD. Plaintiff's more expansive prohibition of criminal activity is also unenforceable because it is not rationally related to a legitimate housing purpose. In Richmond Tenant's Org. v. Richmond Redev. and Hous. Auth., the United States District Court for the Eastern District of Virginia, in an opinion which was subsequently affirmed by the Fourth Circuit Court of Appeals, held that public housing lease provisions must be "rationally related to a legitimate housing purpose" in order to avoid running afoul of the

prohibition against unreasonable terms in such leases contained in 42 U.S.C. § 1437d(l)(1). 751 F. Supp. 1204 at 1205 (E.D.Va., 1990), *aff'd*, 947 F.2d 942 (4th Cir. 1991). In that case, the PHA had a lease provision which made misdemeanor alcohol or marijuana convictions a material breach of the lease, even if they occurred off the public housing premises. 751 F. Supp. at 1210. The Fourth Circuit held that the lease term was unreasonable in violation of 42 U.S.C. § 1437d(l)(1) because it could be used to evict a tenant for an offense that bore no relation to the housing development. 751 F. Supp. at 1206. The instant case is similar. Plaintiff has produced no evidence that Mr. Cobb's conduct does now or ever did create a threat to the public housing complex or to those living in the immediate vicinity. Yet, Plaintiff points to its lease as justification to seek ejectment regardless. To the extent that Plaintiff's claim for ejectment rests on lease terms purportedly authorizing that claim, those terms should be rejected as unreasonable in violation of 42 U.S.C. § 1437d(l)(1).

Numerous courts have recognized that the occurrence of a non-drug-related criminal act, by itself, is insufficient to establish grounds for a housing authority to seek eviction. For example, in Kolio v. Hawai'i Pub. Hous. Auth., the Hawai'i Supreme Court recognized that "the mere showing of some criminal activity" is not enough to violate the prohibition on other criminal activity contained in the public housing regulations, 135 Haw. 267 at 274 (Haw. 2015), and that "[t]he phrase 'that threatens the health, safety, or peaceful enjoyment of the premises' clearly qualifies the kind of criminal activity that violates the provision." 135 Haw. 267 at 272 (Haw. 2015) (citing D.C. Hous. Auth. v. Whitfield, No. 04-LT-410, 2004 WL 1789912, at *6 (D.C. Super. Ct. Aug. 11, 2004); 24 C.F.R. 966.4(f)(12)(i)(A) (establishing a public housing tenant's obligation to ensure that they, their household members, and their guests refrain from certain kinds of criminal activity). *See also* Boston Hous. Auth. v. Bryant, 693 N.E.2d 1060 (Mass. App. Ct. 1998) (tenant's credit card fraud against property manager did not have the required health and safety effect to support eviction); Cabrini-Green Local Advisory Council v. Chicago Hous. Auth., 2007 U.S. Dist. LEXIS 6520 (N.D. Ill. Jan. 29, 2007) (striking a public housing lease provision which permitted eviction upon any felony conviction as an unreasonable lease term prohibited by 42 U.S.C. § 1437d(l)(2)); Housing Auth. of Bangor v. Bush, 2001 Me. Super. LEXIS 17 (Me. Super. Ct. Feb. 1, 2001) (holding tenant's removal of stop sign near his residence did not threaten health, safety, or peaceful enjoyment because there was no evidence that removal of that particular sign caused such a threat).

- b. Plaintiff has failed to show that Mr. Cobb's conduct amounts to a current threat to other residents or those living in the immediate vicinity of the public housing complex.

Both the statutory and regulatory language authorizing eviction for other criminal activity require that the activity "threaten" the health, safety, or peaceful enjoyment of the community. 42 U.S.C. § 1437d(l)(6); 24 C.F.R. § 966.4(l)(5)(ii). The use of present-tense language indicates that it was Congress' and HUD's intention to authorize housing authorities to address only current threats and not threats which no longer exist. It is well established that "[w]here language is unambiguous, the Court's inquiry is over, and the statute must be applied according to its plain meaning", Jennings v. Jennings, 401 S.C. 1 at 4 (2012), and that "phrases and sentences are to be construed according to the rules of grammar", Poole v. Saxon Mills, 192 S.C. 339 at 347 (1939). Thus, because 1) being incarcerated, Mr. Cobb does not pose a current threat to the community, 2) because it is clearly within Plaintiff's authority to remove Mr. Cobb from Defendant's lease pursuant to 24 C.F.R. § 966.4(l)(5)(vii)(C) and 3) because Defendant has made arrangements for Mr. Cobb to reside elsewhere; Plaintiff cannot establish a current threat to the community arising out of Mr. Cobb's conduct. As a result, Plaintiff has failed to establish grounds for eviction.

- c. Plaintiff has failed to show that Mr. Cobb's conduct occurred in the immediate vicinity of the public housing complex.

Even assuming that Plaintiff could seek Defendant's ejectment based upon a threat which no longer exists, Plaintiff cannot show that Mr. Cobb's conduct posed a threat to the residents of Plaintiff's housing complex or to those living in the immediate vicinity. The incident which Plaintiff alleges as grounds to evict Defendant occurred at 1 Cool Blow Street, a location more than one mile by road from Defendant's apartment. HUD has not defined the term "immediate vicinity" in this context and, to the undersigned's knowledge, there is no controlling precedent directly on point. However, several courts have considered the meaning of the term "immediate vicinity" and their analyses should prove persuasive.

For example, in Bailey v. United States the United States Supreme Court considered whether the accused had been detained within the immediate vicinity of premises subject to a search warrant when he was detained "almost a mile" away. 133 S. Ct. 1031, 1038 (2013). The Court refused to define immediate vicinity in detail finding that the accused "was detained at a

point beyond any reasonable understanding of the immediate vicinity of the premises in question”. *Id.* at 1042. In Powell v. Housing Auth., the Pennsylvania Commonwealth Court considered whether a carjacking committed by a subsidized housing tenant’s sons within one mile of the leased unit threatened the health, safety, or right to peaceful enjoyment of residents in the immediate vicinity. 760 A.2d 473 (Pa. Commw. Ct. 2000) *rev’d on other grounds*, 812 A.2d 1201 (Pa. 2002). There, in finding that the carjacking did not constitute grounds for eviction, the Court interpreted immediate vicinity to mean “on the premises or next door”. *Id.* at 482.

While one court has held that criminal activity which occurred “about a mile” from a public housing complex constituted a threat to the health and safety of the public housing community, the instant case is plainly distinguishable. In Lowell Hous. Auth. v. Melendez, the Supreme Judicial Court of Massachusetts held that a housing authority did have grounds to eject a tenant who assaulted and attempted to rob a patron of a convenience store approximately one mile from the housing complex while armed with an eight-inch kitchen knife. 449 Mass. 34 (2007). However, the Court’s holding in *Lowell* was grounded in the fact that it was the tenant himself who had committed the criminal act and not, as in the instant case, a former household member. The *Lowell* Court noted that “[t]enants forced to live in close proximity to such a person would be justified in having serious fear for their own safety and that of family members.” 449 Mass. at 39. It was the ongoing threat posed by the tenant himself, as evidenced by his prior conduct, rather than the simple occurrence of a criminal act which justified the Court’s holding that “certain criminal activity, such as assault by means of a dangerous weapon and armed robbery, is so physically violent, or associated with violence, that one who engaged in it normally would pose a threat to, or reasonable inspire a significant level of fear on the part of, tenants forced to live in close proximity to the offending tenant.” 449 Mass. at 39. In the instant case, that ongoing threat simply does not exist.

Plaintiff has failed to show that Mr. Cobb’s conduct currently has, or ever had, any adverse effect on the health, safety, or right to peaceful enjoyment of other residents of the public housing complex or of those living in the immediate vicinity. Regardless of any language in Plaintiff’s lease which suggests otherwise, establishing such a threat is a prerequisite to Plaintiff’s right to seek eviction in this case. As a result, Plaintiff’s application for ejectment should be denied.

II. Plaintiff has abused its discretion rendering its decision to seek ejectment arbitrary and capricious.

Put simply, Rucker held that a PHA has the discretion to evict tenants for drug-related criminal activity by household members regardless of whether they knew of or participated in the activity. Extending that principle to the instant case, Rucker stands for the proposition that Plaintiff has the discretion to evict Defendant for non-drug-related criminal activity by a household member regardless of whether she knew of or participated in the activity *provided that*, as discussed above, Plaintiff can demonstrate that the activity threatens health, safety, or the right to peaceful enjoyment of other residents or people living in the immediate vicinity. Therefore, even if Plaintiff is able to demonstrate the requisite threat, Rucker and applicable law do not require eviction. Instead, as the Rucker Court recognized, what should follow is a case-by-case analysis taking account of a variety of factors. 535 U.S. 133-134. In a letter to Public Housing directors written shortly after the Rucker decision was issued, then-Secretary of HUD Mel Martinez urged PHAs “to be guided by compassion and common sense in responding to cases involving the use of illegal drugs” and emphasized that “[e]viction should be the last option explored , after all others have been exhausted.” Letter from Mel Martinez, Sec’y HUD, to Pub. Hous. Dir. (Apr. 16, 2002) (copy attached). Rather than engage in such an analysis, Plaintiff approaches this case as one in which eviction is automatic or mandatory. Such an approach is an abuse of the discretion conferred on Plaintiff and arbitrary action in violation of Defendant’s right to substantive due process.

Plaintiff has a number of different options in determining what action to take if it is determined that a tenant has engaged in criminal activity that violates the Lease. While Plaintiff has discretion in determining what action, if any, to take, this discretion is not absolute and may not be exercised arbitrarily, capriciously, or in bad faith. As the United States Supreme Court held in Thorpe v. Housing Authority of Durham

“The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process.”

386 U.S. 670, 678 (1967).

HUD regulations provide that, in deciding what action to take after determining that a tenant, guest, or household member has engaged in criminal activity, Plaintiff may consider:

all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

24 C.F.R. Part 966.4(l)(5)(vii)(B). Further, Plaintiff may consider allowing the exclusion of the offending household member rather than seeking to evict an entire household for the actions of one member. 24 C.F.R. Part 966.4(l)(5)(vii)(C). Thus, while Plaintiff may evict an entire household for certain criminal actions by a single member, it is not required to do so. 535 U.S. at 128-29. Instead, Plaintiff is entrusted with making a decision after consideration of a number of relevant factors including the seriousness of the offense, the extent to which the leaseholder participated in the offense, the effects that the eviction would have on family members not involved in the offense, and the extent to which the leaseholder has taken steps to prevent or mitigate the offense. 535 U.S. at 133-34 (stating that a PHA is given discretion because it is in the best position to review relevant factors); 24 C.F.R. Part 966.4(l)(5)(vii)(A).

While Plaintiff has the discretion to determine what action to take in this situation, that discretion is neither boundless nor is it immune from judicial review. In Greenville Hous. Auth. v. Salters, the Fourth Circuit Court of Appeals held that judicial interference with the discretion accorded the Housing Authority is warranted where “a review of its actions reveals by clear and convincing evidence some arbitrary action outside the boundaries of the federal laws and regulations.” 281 S.C. 604, 608 (1984). Recently, the North Carolina Supreme Court reviewed a case similar in many respect to the instant case. In E. Carolina Reg’l Hous. Auth. v. Lofton, a public housing tenant admitted that her guest put marijuana in various places in her apartment and that her lease with the PHA made her responsible for the conduct of her guests. 789 S.E.2d 449 at 451. The PHA sought to evict the tenant, but failed to exercise its discretion apparently believing that the criminal activity at issue mandated eviction. The court held that eviction was inappropriate because the PHA had failed to exercise its discretion recognizing that while Rucker held “no-fault”

evictions were authorized by statute, the Rucker Court also emphasized the importance of PHAs exercising discretion before pursuing such evictions. 789 S.E.2d 449 at 453.

Courts in other states have reached similar results. For example, in Oakwood Plaza, a Section 8 landlord sought to evict a tenant's entire household based on the tenant's arrest for drug related criminal activity. 800 A.2d 265 (N.J. Super. Ct. App. Div., 2002). While Oakwood Plaza was a Section 8 case rather than a public housing case, the regulations for each of these programs contain identical language authorizing evictions for criminal activity that affects the health, safety, or right to peaceful enjoyment of the premises by other residents or those living nearby. Compare 24 C.F.R. Part 966.4(l)(5)(ii)(A) (public housing regulation) and 24 C.F.R. Part 982.310(c)(2)(i)(A) (Section 8 regulation). The Court held that Federal statutes do not permit a Section 8 landlord to act in an arbitrary or capricious fashion. Further, because a tenant does not have access to an administrative process to challenge an eviction, it is the court's responsibility to determine whether the landlord has exercised its discretion in a manner consistent with the Federal statutes. 800 A.2d at 270. A similar result was reached in Bennington Hous. Auth. v. Bush. 933 A.2d 207 (V.T., 2007). There, a PHA sought eviction based on alleged misrepresentations by a tenant's boyfriend on an application. The court found that the PHA had abused its discretion by failing to consider other alternatives to eviction. "In the end, it is still [the PHA]'s decision, but that decision must not be made arbitrarily or without apparent consideration of the alternatives laid out in the regulations." 933 A.2d at 213.

While South Carolina Courts have not spoken on the use of discretion as it applies to PHAs, our courts have consistently held that the failure to exercise discretion, once it is conferred, constitutes abuse of that discretion. "The exercise of discretion implies conscientious judgment, not arbitrary action, and takes account of the law and particular circumstances of the case, being directed by the reason and conscience of the judge to a just result." State v. Hill, 266 S.C. 49, 51 (1976). "It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly." State v. Smith, 276 S.C. 494, 498 (1981) (Noting also that the mere recital of a discretionary decision is insufficient to show discretion was exercised. It must be stated on what basis the discretion was exercised.). See also Balloon Plantation v. Head Balloons, Inc., 303 S.C. 152 (S.C. Ct. App., 1990); Arrow Bonding Co. v. Warren, 399 S.C. 603 (2012). Thus, Plaintiff's failure to exercise its discretion in this case

constitutes an abuse of that discretion and renders its decision to seek Defendant's eviction arbitrary.

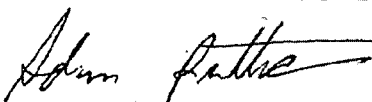
The Department of Housing and Urban Development ("HUD") has offered guidance to PHAs in an effort to assist them in determining whether and when to seek eviction of tenants based on criminal activity. "To ensure both humane results and success in court, PHAs should undertake a case-by-case analysis before proceeding with eviction. If they do seek eviction, PHAs should be prepared to persuade a court that eviction is justified." HUD Notice PIH 96-16 (HA) (Apr. 29, 1996) (available at <http://www.hud.gov/offices/adm/hudclips/notices/pih/files/96-16PIHN.doc>). Plaintiff failed to do so here, instead seeking Defendant's eviction as though that were the only alternative. Plainly that is not so as Plaintiff has the authority to remove Mr. Cobb from Defendant's lease. 24 C.F.R. Part 966.4(l)(5)(vii)(C). Doing so would alleviate any legitimate concern Plaintiff may have regarding the safety and security of other residents. Instead, Plaintiff has sought to evict Defendant, an action which would serve no useful purpose while visiting substantial hardship on Defendant and administrative costs on Plaintiff. Due process requires that Defendant be protected against such arbitrary action and that Plaintiff's application for ejectment be denied.

CONCLUSION

THEREFORE, Defendant respectfully requests that this Honorable Court enter judgment in her favor on Plaintiff's claim for ejectment upon the grounds stated herein and upon such other grounds as the Court deems appropriate. If an additional evidentiary hearing is necessary to support the findings requested herein, Defendant respectfully requests that one be held at a time mutually convenient to the parties and the Court.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES



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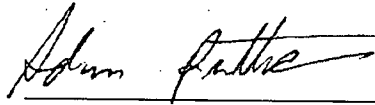
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Attorneys for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 2017, I served the above DEFENDANT'S MEMORANDUM OF LAW ON REMAND upon the parties listed below via electronic mail addressed as follows:



Jacqueline Phillips <jdixon@pnalaw.net>
Carlton D. Bowers <cbowers@pnalaw.net>

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

City of Charleston Housing Authority

Plaintiff,

vs.

Katrina Brown

Defendant(s).

IN THE COURT OF COMMON
PLEAS

2017-CP-10-2711
COMMON PLEAS CASE NUMBER

2016CV1010700386
MAGISTRATE CIVIL CASE NUMBER

NOTICE OF CIVIL APPEAL

The defendant Katrina Brown hereby gives notice of appeal from an order of the Magistrate's Court in the above action, to the Circuit Court of Common Pleas, in the county of Charleston. This notice of appeal is made subsequent to personal notice of the judgment based on the receipt of a written order dated May 15, 2017 which was delivered to Defendant's counsel on May 22, 2017.

As required by Rule 74 SCRPC, within 30 days after Defendant received notice of the judgment a copy of this notice and grounds for appeal have been filed with the Court of Common Pleas and the Magistrate's Court and have been served upon Plaintiff or Plaintiff's Counsel by certified mail with adequate postage affixed and addressed to:

Jacqueline D. Phillips
Parker Nelson & Associates
211 King Street, Suite 107
Charleston, SC 29401

The undersigned hereby requests that the Magistrate's Court transmit the case file of the trial in that Court to the Court of Common Pleas and furnish me with a copy of the case file for which I will pay the costs. The Appellant's exceptions to the Magistrate's judgment follow:

FILED
2017 MAY 30 PM 12:29
JULIE J. ARISTROH
CLERK OF COURT

FACTUAL BACKGROUND

Plaintiff filed the instant case on March 1, 2016 seeking to evict Defendant based on alleged violations of the terms or conditions of the parties lease agreement. The case was heard before the Honorable Jennifer B. McCoy on March 16, 2016. Plaintiff presented testimony that Defendant's son, Anthony Cobb, was arrested on January 13, 2016 for unlawful carrying of a pistol and that, subsequent to his arrest, he confessed to an attempted armed robbery at 1 Cool Blow Street in Charleston. Defendant testified that all the alleged conduct occurred off housing authority property, that Mr. Cobb was currently held in the Charleston County Jail, that she had no knowledge of the alleged incidents until her son was arrested, and that her plan was that Mr. Cobb would stay at his grandmother's house if he was able to post bond.

Judge McCoy found that Defendant was not in substantial breach of her lease agreement and denied Plaintiff's application for ejectment with leave for Plaintiff to remove Mr. Cobb as a household member. Plaintiff appealed to the Court of Common Pleas and the case was remanded with instructions to make findings consistent with Department of Housing and Urban Development v. Rucker, 535 U.S. 125 (2002). Subsequently, Judge McCoy issued a Final Order Upon Remand finding for an eviction. This appeal timely followed.

STANDARD OF REVIEW

Magistrate's Court judgments are effectively subject to a *de novo* standard of review in Circuit Court. S.C. Code Ann. § 18-7-170 provides that:

[u]pon hearing the appeal the [Circuit Court] shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

In addition to correcting errors of law, this statute gives the Circuit Court authority to reverse a Magistrate's findings of fact. Burns v. Wannamaker, 281 S.C. 352; 315 S.E.2d 179 (Ct. App., 1984); Parks v. Characters Night Club, 345 S.C. 484; 548 S.E.2d 605 (Ct. App. 2001). The Circuit Court has the same power in an appeal from Magistrate's Court as the Circuit Court in trials

without a jury and may draw factual conclusions different from those of the Magistrate when considering the same evidence. See Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232; 312 S.E.2d 20 (S.C. App, 1984).

ARGUMENT

Appellant submits that, for the reasons that follow, the court below erred in holding that an eviction is proper in this case. Appellant requests that this Court reverse the judgment of the court below granting an eviction.

1. **There is no evidentiary support for a finding that the alleged criminal activity threatened the health, safety, or right to peaceful enjoyment of other residents or of those residing in the immediate vicinity of the housing complex.**

Defendant is a tenant in subsidized housing owned and operated by Plaintiff, commonly referred to as "public housing." The instant case involves criminal activity which was not drug-related. Under such circumstances, Plaintiff must show that the criminal activity at issue threatens the health, safety, or right to peaceful enjoyment of other residents or of those living in the immediate vicinity of the housing complex. The statute at issue in Rucker and regulations HUD has issued pursuant thereto also vest housing authorities with the discretion to seek to evict tenants for criminal activity "that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including [housing authority] management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises". 24 C.F.R. § 966.4(l)(5)(ii). Plaintiff failed to make such a showing in the instant case. The Plaintiff failed to produce any evidence to show that Mr. Cobb's conduct currently or ever posed the requisite threat to the public housing community or those living in the immediate vicinity.

2. **Plaintiff abused the discretion conferred on it by Congress by failing to consider the circumstances of the case and any alternatives to eviction.**

Rucker held that federal law authorized – but did not require – a housing authority to seek eviction of a tenant for criminal activity in which the tenant took no part and of which they had no knowledge. Instead, housing authorities like Plaintiff were entrusted with the decision as to whether to seek eviction because they were in the best position to consider a number of factors in each case. Here, there is no evidence that Plaintiff considered the circumstances of this particular case or considered whether alternatives to eviction would adequately protect the community. As a result, Plaintiff's decision was arbitrary and an abuse of the discretion conferred on it by Congress. For these reasons, the judgment for ejectment should be reversed.

CONCLUSION

For the reasons set forth herein, Appellant requests that the lower court's order granting eviction be reversed.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES

May 25, 2017



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

City of Charleston Housing Authority

Plaintiff,

vs.

Katrina Brown

Defendant(s).

IN THE COURT OF COMMON
PLEAS

COMMON PLEAS CASE NUMBER

2016CV1010700386

MAGISTRATE CIVIL CASE NUMBER

**BOND TO STAY EXECUTION ON
APPEAL TO CIRCUIT COURT**

Now comes the tenant in the above entitled action and respectfully shows the court that a judgment of ejectment was issued against the tenant and for the landlord on May 15, 2017 by the presiding magistrate. Tenant has appealed the judgment to the circuit court.

Tenant's rent is subsidized by HUD and she does not pay rent at the present time.

Tenant hereby undertakes to pay the periodic rent hereinafter due according to the terms of the lease and any rent addendum and moves the circuit court to stay execution on the judgment for ejectment until this matter is heard on appeal and decided by the circuit court.

Date: 5-25-2017

Katrina Brown
Tenant

Upon execution of the above bond, execution on the judgment of ejectment is hereby stayed until the action is heard on appeal and decided by the circuit court. If Tenant is subsequently required to pay an amount of rent based upon changes to her HUD subsidy, the landlord may move to modify the bond.

Date: _____

Judge or Clerk

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON.

City of Charleston Housing Authority

Plaintiff,

vs.

Katrina Brown

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-02711

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

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- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Alter/Amend

Estimated Time Needed: 15min

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☒ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON.

City of Charleston Housing Authority Plaintiff,
vs.
Katrina Brown Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-02711

MOTION TO ALTER OR
AMEND

Rule 59(e), SCRPC

TO: PARKER NELSON & ASSOCIATES, COUNSEL FOR PLAINTIFF

NOTICE IS HEREBY GIVEN THAT Defendant, by and through her undersigned counsel, will move before the presiding judge for an Order altering or amending the order dated April 17, 2018 as indicated herein on the tenth day after service of this motion or as soon thereafter as counsel may be heard. This motion is made upon the following grounds, the pleadings and papers in this case, and such other material or arguments as may be properly submitted to the Court:

Defendant makes this motion seeking a ruling on two arguments which were raised in her submissions to this Court and to the Magistrates Court, but were not expressly ruled upon in this Court's order dated April 17, 2018.

First, Defendant argued that Plaintiff abused its discretion by pursuing the eviction of Defendant and her minor daughter as though that action were the only alternative rather than exercising its discretion to determine whether other options were available such as the exclusion of Cobb, the offending household member, an alternative that was both offered by Defendant and expressly endorsed by Judge McCoy in her March 31, 2016 post-trial order. In support of her argument, Defendant pointed to a number of cases supporting the proposition that a Public Housing Agency ("PHA") like Plaintiff may not act arbitrarily, but must actually exercise the discretion that Congress conferred upon it in determining whether to seek the eviction of a low-income family. See Dft. Memo. of Law on Remand dated April 21, 2017, a copy of which is attached hereto. A standout among these cases is the recent decision by the North Carolina Supreme Court in E. Carolina Reg'l Hous. Auth. v. Lofton, 789 S.E.2d 449 (N.C. 2016), in which the Court noted the emphasis that Department of Housing & Urban Development v. Rucker, 535 U.S. 125 (2002), placed on the importance of PHA officials exercising discretion before pursuing "no-fault" evictions. In Lofton, as here, the record shows that "plaintiff only considered whether the facts

MOTION TO ALTER OR AMEND

ROA - 055

permitted eviction, thereby omitting the critical step of determining whether eviction should occur in this case." 789 S.E.2d at 454. Plaintiff's decision to seek the eviction of Defendant and her minor daughter, two people who had no involvement in the criminal activity alleged, is arbitrary and an abuse of discretion. As a result, Plaintiff's application for ejectment should be denied.

Second, Defendant argued that Plaintiff's authority to seek eviction for non-drug-related criminal activity only extends to activity which presents a current or ongoing threat to the health, safety, or right to peaceful enjoyment of other residents of the public housing complex or those living in the immediate vicinity. Both the statute and regulation which grant such authority require that the activity in question "threaten" the health, safety, or peaceful enjoyment of the community. 42 U.S.C. § 1437d(1)(6); 24 C.F.R. § 966.4(1)(5)(ii). Here, because 1) being incarcerated or residing elsewhere, Mr. Cobb does not pose a current threat to the community, 2) because it is clearly within Plaintiff's authority to remove Mr. Cobb from Defendant's lease pursuant to 24 C.F.R. § 966.4(1)(5)(vii)(C) and 3) because Defendant has made arrangements for Mr. Cobb to reside elsewhere; Plaintiff cannot establish a current threat to the community arising out of Mr. Cobb's conduct. As a result, Plaintiff's application for ejectment should be denied.

THEREFORE, Defendant respectfully requests that this Honorable Court reconsider its Order dated April 17, 2018 and, for the reasons stated herein, deny Plaintiff's application for ejectment.

Respectfully Submitted,

May 4, 2018
Orangeburg, SC

SOUTH CAROLINA LEGAL SERVICES


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Attorneys for the Defendant

MOTION TO ALTER OR AMEND

ROA - 056

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Alison Renee Lee, Circuit Court Judge

Case No. 2017-CP-10-2711

The Housing Authority of the City of Charleston

Respondent

v.

Katrina Brown

Appellant

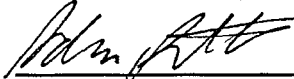
RECEIVED
DEC 05 2018
SC Court of Appeals

NOTICE OF APPEAL

Katrina Brown appeals the order of the Honorable Alison Renee Lee dated April 17, 2018 and the order denying her Rule 59(e) motion dated November 1, 2018. Appellant received written notice of entry of Judge Lee's order denying her Rule 59(e) motion on November 8, 2018.

December 5, 2018

SC APPLESEED LEGAL JUSTICE CENTER



By: Adam Protheroe, S.C. Bar No. 78442
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SOUTH CAROLINA LEGAL SERVICES
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Attorneys for Appellant

1

2 STATE OF SOUTH CAROLINA) COMMON PLEAS
3 COUNTY OF CHARLESTON) CASE NO. 2016-CP-10-2230

4

5 THE HOUSING AUTHORITY)
6 OF THE CITY OF)
7 CHARLESTON,) Transcript of Record

8

9 Plaintiff,

10

11 vs.) Date: December 13, 2016

12

13 KATRINA BROWN,

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15 Defendants.

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17 * * * * *

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20 B E F O R E:

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22 The Honorable Robin Stilwell

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29 Denise J. Lauder, RPR

30 Ninth Judicial Circuit

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1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4 JACQUELINE PHILLIPS, ESQUIRE

5 Parker Nelson & Associates

6 211 King Street, Suite 107

7 Charleston, SC 29401

8

9 REPRESENTING THE DEFENDANT:

10 MATTHEW M. BILLINGSLEY, ESQUIRE

11 2803 Carner Avenue

12 North Charleston, SC 29405

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Proceedings.....	4
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INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 The following proceedings were held
2 December 13, 2016, @ 3:58 p.m., Charleston County
3 Common Pleas.)

4 THE COURT: Okay. Next case, Housing
5 Authority of the City of Charleston v. Katrina
6 Brown, case number 2016-CP-10-02230.

7 Okay. I would be happy to hear from
8 you.

9 MS. PHILLIPS: Thank you, Your Honor.
10 May it please the Court.

11 My name is Jacqueline Philips on behalf
12 of the Housing Authority of the City of Charleston.
13 We are appealing the magistrate judge's decision in
14 this eviction. If you would like -- I have a brief
15 Memo with exhibits, if you would like a copy.

16 THE COURT: Sure.

17 MS. PHILLIPS: I clocked it downstairs.
18 May I approach?

19 THE COURT: Sure. Please. Thank you
20 very much.

21 MS. PHILLIPS: Thank you, Your Honor.

22 It is essentially our position that the
23 magistrate erred in applying the case law and the
24 statutes applicable to this matter.

25 There are several leases that Ms. Brown

1 signed with the Housing Authority. The latest are
2 attached to our Memorandum. Listed on the leases
3 are Katrina Brown, Janique Richardson and Anthony
4 Cobbs. Mr. Cobbs is listed on both leases.

5 THE COURT: Okay.

6 MS. PHILLIPS: On January 14th of 2016,
7 Mr. Cobbs was arrested in reference to an unlawful
8 carrying of a pistol. He later admitted to an
9 attempted armed robbery that took place at 1 Cool
10 Blow in downtown Charleston.

11 The details of the magistrate level
12 hearing are outlined in the Return that are part of
13 the file, and we agree with the facts that the
14 judge rendered. We do disagree with her
15 application in the law.

16 So if you look at the lease agreements,
17 which are Exhibits A and B -- they are essentially
18 the same, they are just dated differently -- the
19 terms that we believe were violated specifically
20 are 5F -- and I can direct you to it. That would
21 be the first page where it states, neither the
22 resident or any household member, guest, or any
23 other person under the resident's control shall
24 engage in any violent or drug-related activity on
25 or off the premises.

1 Additionally, 16n, which is on two
2 pages, it would be page 3 of 4, lists as a reason
3 for eviction any violent or drug-related activity
4 performed by any household member, guest, or other
5 person under the resident's control on or off the
6 premises, not just on or near the premises.

7 If you look at Title 24, Section 966.4,
8 it governs the Public Housing Lease and Grievance
9 Procedures, it states, any criminal activity that
10 threatens the health, safety, or right to peaceful
11 enjoyment of the premises by other residents, or
12 any drug-related criminal activity on or off the
13 premises.

14 It goes on to say that the Public
15 Housing Authority may terminate the tenancy only
16 for -- and it lists several items. And it
17 includes, other good cause includes, but is not
18 limited to, the following; and it states criminal
19 activity or alcohol abuse that we just went over.

20 Your Honor, we believe that and other
21 activities would certainly encompass a violent
22 crime, an arrest for a violent crime; it's not
23 limited to just drug activity. And we think it's a
24 reasonable interpretation of that statute.

25 The magistrate also looked at case law,

1 Department of Housing and Urban Development v.
2 Rucker. She said that she did not think it
3 applies. We think that it is substantially
4 similar.

5 The US Supreme Court looked at Section
6 1437d(L)6, and it's quoted in the Department of HUD
7 v. Rucker. They state, Section 1437d(L)6 requires
8 lease terms that give local housing authorities the
9 discretion to terminate the lease of a tenant when
10 a member of the household or a guest engages in
11 drug-related activity, regardless of whether that
12 tenant knew, or should have known, of the
13 drug-related activity. And they did rule that they
14 were rightfully evicted.

15 So if you look at that section it
16 actually states similar to the Housing Authority's
17 contract in the prior provision we've gone over,
18 any criminal activity that threatens the health,
19 safety, or right to peaceful enjoyment of the
20 premises by other tenants, or any other
21 drug-related criminal activity on or off such
22 premises engaged in by a public housing tenant, any
23 member of the tenant's household, or any guest or
24 other person under the tenant's control shall be
25 cause for termination of tenancy.

1 So we believe that while the judge
2 correctly reviewed the facts, she misapplied the
3 case law and the statutes and that Ms. Brown should
4 have been evicted.

5 THE COURT: Okay. Thank you very much.

6 MS. PHILLIPS: Thank you.

7 THE COURT: Yes, sir.

8 MR. BILLINGSLEY: Thank you, Your
9 Honor. May it please the Court.

10 Matt Billingsley of the South Carolina
11 Legal Services for the Respondent. And I think I
12 can start by just acknowledging that I think it's
13 essential that they have misinterpreted or
14 misstated what the regulation holds for these kind
15 of activities.

16 The Rucker case -- and I guess to start
17 with, the plaintiff's counsel or appellate counsel
18 was not present at the time of the trial, and at
19 the time of the trial that we had the judge really
20 did not discuss Rucker.

21 We -- we -- we didn't discuss it. She
22 raised that and distinguished it in her -- in her
23 Order, and there was no subsequent motion filed
24 that I'm aware of to have her review her decisions
25 on distinguishing that.

1 We also believe that it is
2 distinguishable because Rucker dealt with
3 drug-related criminal activity. And while they
4 want to marry those two together as drug-related
5 criminal activity and, as they call it, violent
6 criminal activity, that's not what the regulations
7 do.

8 Rucker did not address really the
9 knowledge aspect. Those are required that the
10 person have knowledge or not have knowledge, but if
11 you look at what the magistrate ruled upon in her
12 Order and what she mentioned in her Return is she
13 relied on the evidence, she relied on the
14 testimony, she relied on 966.4 and 24 CFR 966.4,
15 which she attached to her Return.

16 And, specifically, page 10 on her
17 printout of that regulation, which I believe is not
18 -- is 24 CFR 966.4L(5) little -- it's either Roman
19 numeral i or 2 right below that. Rucker represents
20 the first one there below 5 -- below number 5,
21 evicting drug criminals. What Rucker does not
22 address is the one right below it that says,
23 evicting other criminals. So they don't list those
24 two together.

25 And, in fact, evicting other criminals,

1 in part A and B on that page, lists a threat to
2 other residents. And so the lease must provide
3 that any criminal activity by a covered person that
4 threatens the health, safety, or right to peaceful
5 enjoyment of the premises by other residents or
6 threatens the health, safety, or right to peaceful
7 enjoyment of their residences by persons residing
8 in the immediate vicinity of the premises is
9 grounds for termination of tenancy.

10 So it does not say that they are
11 allowed to put into a lease that we can lump this
12 violent criminal activity in with drug-related
13 criminal activity. That's not what the regulations
14 allow for. And, in fact, the regulation is quite
15 clear that it distinguishes drug-related activity
16 or drug-related criminals from other criminal
17 activity.

18 And what's missing in Rucker is
19 addressing a situation of whether or not you have
20 -- is it other criminal activity? Does it threaten
21 the health or safety of residents in the actual
22 complex? Or does it threaten the health and safety
23 of residents in the immediate vicinity of the
24 complex, or does it not do those things?

25 And if you look at the judge's -- the

1 magistrate's Return, it's fairly clear in her
2 Return that -- it will be on the top of the third
3 page. It starts on the bottom in number 10 on her
4 Return where she says, after reviewing the
5 testimony presented along with applicable South
6 Carolina and US law, the magistrate issued an Order
7 finding that Defendant Katrina Brown was not in
8 substantial breach of her lease with the Housing
9 Authority.

10 What they're required to have is a
11 substantial lease violation in order to get the
12 conclusion of the possibility of an eviction. And
13 with the Magistrate finding that, she could have
14 found that because this did not happen on the
15 premises, and it's not required or necessarily put
16 that they're allowed to say, we can lump it into
17 drug activity and it doesn't matter where it
18 happened. She could have found on that ground.

19 She could have found on the ground that
20 it did not threaten the health, safety, or lack of
21 peaceful enjoyment of people in the immediate
22 vicinity for residential or the residents of the
23 actual complex. And, in fact, I don't believe they
24 really presented any evidence on what impact or
25 impact it may or may not have had on those

1 individuals, which we believe from what our
2 argument in the lower court was likely going to be
3 that it was -- that it was deemed to not be a
4 substantial lease violation.

5 In addition to that, she also
6 considered the regulation a little bit farther in
7 which is L5, I believe, little Roman numeral vii(B)
8 which does state that the Housing Authority can
9 consider other circumstances. And it says, PHA
10 action generally, that's on page 11 of the
11 magistrate's submission of that regulation.

12 In part B, consideration of
13 circumstances. That outlines that they are able to
14 consider -- based on the policies and practices,
15 may consider all circumstances relevant to a
16 particular case, the seriousness of the action, the
17 extent of the participation by the leaseholder in
18 the offending action, the effects that the eviction
19 would have on family members not involved, and the
20 extent to which the leaseholder has shown personal
21 responsibility and has taken all reasonable steps
22 to prevent or mitigate the offending action.

23 Another part that we can argue down
24 below -- in the magistrate's Return she's included
25 her notes. And it has a little note at the top

1 left of the first page of her notes where she noted
2 that we argued essentially the State law which
3 their leases and their eviction procedures have to
4 comply with the State and Federal law.

5 And then the State law does allow for
6 -- under 27-40-710 and 720, it does allow for a
7 right to cure a particular breach. It mentions
8 that that breach cannot affect health and safety
9 under two other statutes which is, I believe, 510
10 and 540, but 510 and 540 reference allowing
11 criminal activity or something to be used as the
12 actual residence for criminal activity. They
13 reference the actual residence itself or the
14 grounds of the resident as opposed to being off the
15 premises.

16 And, in fact, that's one of the things
17 she testified to, and it's in the record of the
18 Order in the magistrate's Return, that they have --
19 that this person, whether he did the criminal
20 activity or not, did not return -- did not return
21 to the unit and that she has taken steps to make
22 sure that he will not return to the unit in the
23 event that the Housing Authority would feel, or
24 someone might feel, threatened if that person came
25 back to stay and live in their unit.

1 The judge even went so far to say, if
2 it's in line with your policy and procedures, you
3 can take whatever steps you may need in order to
4 possibly exclude him from the lease or work that
5 out with the Housing Authority, but we don't
6 believe the judge made any error of law.

7 As we stated, Rucker itself deals only
8 with the drug-related criminal activity, and while
9 they would like to marry that together with the
10 all-other-types-of-criminal-activity, which they
11 say is viable activity, that's just not what the
12 regulation allows them to do. It's not what's --
13 as far as what their lease requirements are.

14 They're required to say that it has to
15 affect the health and safety of someone -- a
16 resident living in the unit or living on the
17 grounds of the apartment complex, or it has to
18 affect the health and safety of someone in the
19 immediate vicinity. And those are not things that
20 they've appealed.

21 They didn't appeal saying this happened
22 in the immediate vicinity, that it's affected the
23 residents of the unit or it's affected the
24 residents that were immediate vicinity surrounding
25 the unit.

1 I don't remember the exact distance,
2 but it's downtown. I believe it was a mile and a
3 half away or so, and I don't believe it specified
4 anything how the -- whether it was a residential
5 area or any facts that they presented sufficient to
6 show that it -- that nexus to that threat of health
7 and safety to those individuals.

8 And I think for those reasons it's
9 distinguishable, it's different from drug-related
10 criminal activity. They can't simply say because
11 it happens, no matter where it happened. It has to
12 satisfy the regulations, and we believe that the
13 judge considered all of those things, not just
14 Rucker.

15 As I said, she considered what she felt
16 was distinguishable, but she also, we believe,
17 would have considered the proximity and whether
18 there's a threat to health and safety, and those
19 things were not appealed in this. And there was
20 essentially other sustaining grounds with that for
21 the judge to rule upon, as well as the client's
22 right to appeal and a right to -- right to cure
23 under State law 27-40-710, and the fact that she in
24 fact did that. She was able to keep him away and
25 she took those reasonable steps.

1 They are allowed to consider all of
2 those things so we don't believe this is just a
3 blanket rule. If this happened and it happened off
4 premises, Rucker stands for we can just evict them.
5 That's not what it stands for. It only dealt with
6 the knowledge aspect and that's not what this judge
7 used to make her decision.

8 THE COURT: Okay. Yes, ma'am.

9 MS. PHILLIPS: Briefly, Your Honor. I
10 do think that if you read the statute sections that
11 they do actually apply. They state, or, in both of
12 them. Additionally, if you look at the specific
13 terms of the lease that Ms. Brown signed on
14 numerous occasions, those sections, 5f and 16n,
15 very specifically say that neither the resident or
16 any household member, guest, or other person under
17 their control shall engage in any violent or
18 drug-related activity on or off the premises, and
19 it continues on. It lists that as a specific
20 reason that you can be evicted.

21 I think that if you look at Rucker,
22 while it does specifically deal with drug-related
23 activity, the section L(6) relates to both. It
24 doesn't just limit it to drug-related criminal
25 activity. And so we think that, again, that they

1 were erroneous in those decisions.

2 And, also, concerning the provision of
3 having Mr. Cobbs stay somewhere else, she still
4 lists him as a resident under the lease -- in the
5 most current lease which was actually signed after
6 he was arrested. So, obviously, we have concerns
7 with that. If she's saying he's not going to be
8 staying there, I'm not sure why she's still listing
9 him on the lease.

10 And certainly we believe the unlawful
11 carrying of a pistol in an armed robbery certainly
12 affects the safety of residents nearby. So that's
13 all. Thank you, Your Honor.

14 THE COURT: So you -- in just a very
15 technical portion of your argument you suggested
16 that even if her ruling was that the young person
17 who was -- who was accused of these crimes, if he's
18 not -- by concession is not going to be living in
19 the subject apartment, then he should be -- if his
20 name is on the lease, it should at the very least
21 be taken off the lease?

22 MS. PHILLIPS: Well, I don't think that
23 if she intends -- I mean, in my mind, certainly, if
24 I wasn't intending for someone to live at my
25 residence, I wouldn't include them on the lease,

1 and because the lease was signed after --

2 THE COURT: Now, let's make sure that
3 we understand about whom we're talking. When you
4 say, she, you mean the judge?

5 MS. PHILLIPS: No; I'm talking about
6 Ms. Brown.

7 THE COURT: Okay.

8 MS. PHILLIPS: I don't think the judge
9 really had anything to do with creating the lease.

10 THE COURT: All right. Well, that's --
11 I think that sounds like what I was grabbing. I
12 didn't see any indication that she had made any
13 modification to the lease at all.

14 MS. PHILLIPS: No.

15 THE COURT: Okay.

16 MS. PHILLIPS: There is -- on there
17 there are two leases, Exhibits A and B, and I think
18 B was the most recent one which was signed on
19 February --

20 THE COURT: Which was subsequent to the
21 hearing?

22 MS. PHILLIPS: No; it was subsequent to
23 the arrest. It was prior to the hearing, but
24 subsequent to the arrest.

25 THE COURT: I understand. I got you.

1 MS. PHILLIPS: But that's not really --
2 and, certainly, not what we're basing our argument
3 on today, but --

4 THE COURT: I understand. I
5 understand. I just wanted to make sure that I was
6 clear.

7 MS. PHILLIPS: The judge made no
8 modification to the lease.

9 THE COURT: Okay. Here's what I'm
10 going to do; I'm going to take it under advisement
11 Just in the context of this hearing, I don't have
12 enough time to go and read those regulations.
13 You-all have given me a lot of information in a
14 fairly short period of time; and you-all forgive
15 me, I'm sure that I don't have an encyclopedic
16 memorization of these Federal Regulations and the
17 laws that pertain to the Housing Authority.

18 So I have what you have submitted and I
19 will make copies of the relevant portions of the
20 file to include the Return of the magistrate and
21 I'll take it under advisement. I'll rule as soon
22 as I can. Okay.

23 MS. PHILLIPS: Thank you.

24 MR. BILLINGSLEY: And, Your Honor, they
25 had submitted a -- they only mentioned in their

1 appeal that they're appealing Rucker and that's the
2 thing -- I wasn't sure how to really respond to
3 that. Would you like me to prepare any kind of a
4 Memo --

5 THE COURT: You're welcome to. If you
6 think that it would be instructive to me in my
7 analysis, then you're welcome to, but I certainly
8 don't require it.

9 MR. BILLINGSLEY: Thank you.

10 MS. PHILLIPS: Thank you.

11 (These proceedings were concluded at
12 4:17 p.m.)

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1 CERTIFICATE OF REPORTER

2
3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 27th day of March, 2017 at
13 Charleston, Charleston County, South Carolina.

14
15
16
17
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Katrina Brown,	)	CASE NO. 2017-CP-10-02711
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	ORIGINAL TRANSCRIPT
VS.	)	
	)	
City of Charleston Housing	)	
Authority,	)	
	)	
RESPONDENT.	)	
	)	

September 5, 2017

Charleston, South Carolina

B E F O R E:

The Honorable Alison R. Lee

A P P E A R A N C E S:

Theodore Parker, III, Esquire
For the Applicant

Jacqueline D. Phillips, Esquire
For the Respondent

Certified Transcript Provided For: Adam Protheroe

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E XHEARING

-- 03

EXHIBITS - None ProfferedCERTIFICATION OF TRANSCRIPT

-- 15

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: This is Docket Number 2017-CP-10-02711.

2 The appellant is represented by?

3 MR. PROTHEROE: Adam Protheroe, Your Honor.

4 THE COURT: Thank you.

5 MR. PROTHEROE: I'm sorry.

6 THE COURT: And the respondent is represented by?

7 MS. PHILLIPS: Jacqueline Phillips, Your Honor.

8 THE COURT: Okay. This is an appeal that was filed by
9 Ms. Brown; is that correct?

10 MR. PROTHEROE: Yes, Your Honor, it is.

11 THE COURT: I have had the opportunity to review the
12 information that has been provided to me in the form of the
13 briefs as well as the record. I have also had the
14 opportunity to review the order that was issued previously.
15 And I have had a chance to review the lease as well. So I
16 would be happy to hear your arguments, Mr. Protheroe.

17 MR. PROTHEROE: Thank you, Your Honor. Since you have
18 had a chance to review it I will dispense with the facts.
19 And also if there is anything you would like me to go over
20 in particular.

21 On this appeal we present two arguments, two reasons
22 why the ruling below was in error. The first is that there
23 was no evidence or even as it appeared to be a finding to
24 support the argument that there was an effect on the health
25 or safety of the other tenants of the housing complex or

1 folks living in the immediate vicinity. And that is the
2 requirement before the Housing Authority even has the
3 discretion to evict for criminal activity that is
4 non-drug-related.

5 The second argument is that there's no evidence to show
6 that the Housing Authority used the discretion that HUD
7 conferred on them and by way of regulation and that by
8 failing to use that discretion by essentially treating this
9 as a mandatory eviction they have abused it, acted
10 arbitrarily in violation of our client's right to due
11 process.

12 With respect to the lack of any effect on health or
13 safety of the folks at the housing complex or of folks
14 living in the immediate vicinity, the criminal activity in
15 this case was engaged in as far as we can tell based on his
16 confession by our client's son Anthony Cobb who no longer
17 lives at the property. He likely is still incarcerated. I
18 haven't heard any change in that status.

19 And her plan ultimately too once he was incarcerated
20 was to have him live somewhere else - he is a minor but
21 could live with his grandmother off property - to alleviate
22 any threat that potentially he may have posed to anybody
23 else.

24 But the criminal activity in this case occurred about a
25 mile off of the property. It is just a shade over a mile I

1 think by a road. When looking at what kind of health and
2 safety effect there has to be it has to be on either the
3 complex itself or the immediate vicinity. That is the way
4 the statute reads, and that is the way the regulation
5 reads.

6 The lease in this case reads a little more broadly than
7 that. But I think that is an unauthorized provision. I
8 don't think that the Housing Authority can go beyond the
9 scope of the authority that HUD has given them to evict.
10 They can't evict for more reasons than HUD has given them.
11 And there is arguments about that in the brief that we filed
12 below.

13 There are a couple of cases I wanted to draw the
14 court's attention to. The US Supreme Court addressed a
15 search warrant case and trying to figure out what was --
16 what was the immediate vicinity.

17 The court held that a period -- a distance of almost a
18 mile was beyond any reasonable understanding of that notion.
19 So we are well outside of the immediate vicinity of the
20 apartment complex.

21 Pennsylvania Commonwealth Court in a case very similar
22 to this one addressing criminal activity I believe held that
23 immediate vicinity means on the premises or next-door. It
24 is not over a mile away.

25 The only case that I am aware of that defines criminal

1 activity occurring in that mile range to be sufficient for
2 an eviction is a case out of Massachusetts, the Lowell case.

3 And in that case it was the tenant himself that engaged
4 in the criminal activity. I think it was an armed robbery
5 at knife point.

6 And the court based its decision on legitimate feeling
7 of threat that other residents may have been under if that
8 tenant continued to live there. It was the actual person
9 who committed the offense. But that's not the case we have
10 here.

11 So ultimately there never was a threat to the Housing
12 Complex or the folks living in the immediate vicinity. And
13 even if there was, that threat has been alleviated by him
14 not being there anymore.

15 And the Housing Authority's attempts to evict both our
16 client and her other minor daughter who still live with her
17 is essentially punitive. There is no benefit to the Housing
18 Complex. It is essentially arbitrary.

19 In the Rucker case that has been batted back and forth
20 in the briefs and was the reason for the initial appeal,
21 interestingly the facts in that Rucker case it was a
22 drug-related criminal activity. But they are not dissimilar
23 from the facts that we have here in the sense that the
24 offender in that case was incarcerated.

25 When the offender was incarcerated the Housing

1 Authority in the Rucker case chose not to go forward with
2 the eviction because there was no further threat. And we
3 think that is what should happen here.

4 So we talk a lot about Rucker as justifying the Housing
5 Authority's action, when in fact I think it shows what the
6 Housing Authority ought to be doing here which is not to
7 seek eviction.

8 So the second argument we raised is the abuse of
9 discretion argument, essentially that if you are conferred
10 with discretion this is true in the judicial context as it
11 is we think for housing authorities - and cases supporting
12 that are in the brief - but if you confer the discretion and
13 chose not to use it, that is an abuse. It is an arbitrary
14 action.

15 You know, essentially the effects of -- I apologize,
16 Your Honor. There was a case again that we cite in the
17 brief, the Salters case, that talks about under what
18 circumstances it is appropriate for the court to say and
19 then kind of review the discretion used by a housing
20 authority or not used.

21 And that court found that if there is essentially in
22 the face of an arbitrary act there is an opportunity -- it
23 is a situation where the court should sit in judgment of the
24 abuse of discretion and consider a variety of factors
25 including: The extent of participation by the tenant. Here

1 there is none.

2 Including effects of eviction on other housing -- or.
3 other members of the household. In this case disastrous.

4 And the extent to which the tenant took sort of
5 personal responsibility and try to alleviate the
6 consequences. And here she did that by offering to remove
7 him from her household.

8 I wanted to point you briefly to the Lofton case, which
9 again we cite in the brief. But it is a case from the North
10 Carolina Supreme Court. Very recent. It just came down
11 last year. That held that a housing authority's failure to
12 use its discretion in a similar case to this one was grounds
13 for reversal of the eviction. And that was in August of
14 2016 when that opinion came down.

15 So it is not -- there was no -- never and is not
16 currently any kind of threat that would justify eviction of
17 our client and her remaining daughter.

18 And even if there was, the Housing Authority abused its
19 discretion by failing to consider any of the circumstances
20 that HUD has offered them to consider.

21 If you have any questions I would be happy to address
22 them. Otherwise that is all I have.

23 THE COURT: Thank you.

24 Ms. Phillips.

25 MS. PHILLIPS: Thank you, Your Honor. May it please

1 the court. Mr. Protheroe offered up two reasons why they
2 think that the ruling was incorrect in this matter. And we
3 think they kind of run together actually.

4 He talks about there is no evidence of or finding
5 support that there is a threat to health or safety of other
6 residents.

7 All of this was actually already addressed by Judge
8 Stillwell in his prior order. But we can go back through it
9 again.

10 If you look at the statute -- first of all if you look
11 at the contract that Ms. Brown signed, the contract between
12 herself and the Housing Authority specifically says under
13 16-N that a reason for eviction could be any violent or
14 drug-related activity performed by any household member,
15 guest, or other person under the resident's control on or
16 off the premises. Not just near the premises. So that
17 really is first and foremost just where she breached her
18 contract.

19 And she is responsible for her minor son who is a
20 resident at the premises. So right there you have her first
21 breach of the contract between herself and the Housing
22 Authority.

23 To say that there is no evidence or finding to support
24 the threat as to the health or safety of other residents,
25 Your Honor, we would certainly argue that a person who is

1 living at the Housing Authority who is engaged in violent
2 activities such as armed robbery even if it is a mile off of
3 the premises since we all know there are retributions, there
4 are ongoing issues, and to say that just because it did not
5 occur specifically on the property doesn't mean that it
6 doesn't threaten the health or safety of other residents at
7 this property. Because he is going to and would return to
8 that property which could of course, you know, give rise to
9 other activities resulting from that.

10 To say that there is no evidence of the Housing
11 Authority using the discretion vested in it by HUD, that is
12 not the case, Your Honor.

13 The Housing Authority it's their duty and their
14 discretion to look at the past with residents. They look at
15 their past activities, past issues they have had with them.

16 They don't arbitrarily decide to evict residents. That
17 is not -- that is not what they do. Their job is to -- they
18 are out there helping people. They don't arbitrarily just
19 evict someone that they have no issues with.

20 There had been issues with this resident in the past.
21 And this was just what they decided to go ahead and move
22 forward on. Because they believed at this point, you know,
23 there was an issue with her and there's issues with their --
24 and there could be issues with their other residents.

25 And it is their responsibility not only to protect Ms.

1 Brown but also to protect their other residents. You know,
2 it is a public issue. It is a public housing issue. Just
3 like Judge Stillwell found.

4 And going back to the statute, Your Honor, which we
5 briefed, other good cause, Section 3-5, other good cause,
6 includes but is not limited to the following: criminal
7 activity or alcohol abuse as provided in Paragraph 1-5 of
8 this section. And we have a statute for you, Your Honor.
9 Section 3 states that it is not limited to drug-related
10 activity.

11 So if you look at Rucker while in Rucker the case was
12 very specific as to drug activity, that was the issue before
13 them. It is the same argument though. There is violent
14 activity. There is drug activity. It all comes back on the
15 Housing Authority to determine what is best for their
16 residents, what is best for their -- the people that work
17 there.

18 And so, you know, Your Honor, that is our argument that
19 it is their -- it is their responsibility and their duty to
20 look at issues with the resident and with their past and to
21 move forward with what is in the best -- best interest of
22 everyone who lives there.

23 And if you look at Judge Stillwell's order that is what
24 he said. The intention of the regulation is the same, to
25 hold the head of household responsible for the tenant's

1 activity in a unit regardless if they were aware of the
2 activity.

3 He found that the plain language of the statute vested
4 a public housing authority agency with the authority to
5 evict a tenant under circumstances similar to the case at
6 bar. Public policy as advanced by the legislature and the
7 Supreme Court recognizes that drug activity and violent
8 activity is a plague on public housing communities and
9 therefore this legislation was enacted to potentially curb
10 this illegal activity.

11 So I mean I think the issues are decided. I think it
12 is very clear that first of all -- first and foremost the
13 breach of the contract that she signed with the Housing
14 Authority and then moving on to the case law. And the
15 statutes, Your Honor, I think they are all in our favor.
16 And we think that Ms. Brown is subject to eviction
17 rightfully.

18 THE COURT: Thank you.

19 Response?

20 MR. PROTHEROE: Yes, Your Honor, just briefly. There
21 was mention of the lease. And I think I covered this in the
22 brief, but I just wanted to touch on that again.

23 The language in the lease that says as far as violent
24 criminal activity on or off premises, not just on or near,
25 that is beyond the statutory authorization to evict.

1 The statute and the regulations say that the Housing
2 Authority can only evict for a listed set of types of
3 criminal activity. And if it is non-drug-related criminal
4 activity it has to be on or near. On or off premises is
5 just beyond the scope of what the statute authorizes.

6 THE COURT: I'm sorry, but if it -- if it is non-drug
7 activity it has to be ...?

8 MR. PROTHEROE: On or near. Drug activity is on or
9 off.

10 And Congress has seen fit to essentially say that drug
11 activity by itself regardless of proving any threat whether
12 it is on or off premises is by -- is grounds for eviction.
13 But they have not seen fit to do that with criminal activity
14 that is non-drug-related. And we don't understand anybody
15 to be arguing this is drug-related.

16 The second was mentioned of the Housing Authority
17 considering Ms. Brown's past. We don't know what that past
18 is. They didn't plead that past or raise that as a grounds
19 for eviction when they filed the case in the first place.
20 So I think it would be irrelevant to this case.

21 And if the statute's intention is to protect other
22 residents it needs to attack an identifiable threat. And
23 here none exists. If it ever did.

24 And that is all I have, Your Honor, unless you have any
25 questions. Thank you.

1 THE COURT: Thank you for your arguments. I will
2 review the case law in light of the arguments that you have
3 made, spend a little bit more time with it, and I will issue
4 a written order. Thank you.

5 MR. PROTHEROE: Thank you.

6 MS. PHILLIPS: Thank you, Your Honor.

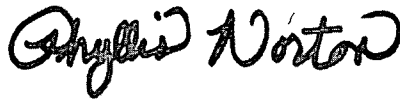
7 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on September 5, 2017..

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR

Date: December 9, 2018

Certified Transcript Provided For: Adam Protheroe
Certification Reference #2018-1209

HOUSING AUTHORITY OF THE CITY OF CHARLESTON
DWELLING LEASE AGREEMENT

1. PARTIES AND DWELLING UNIT: The parties to this Lease are The Housing Authority of the City of Charleston, referred to as Landlord, and, the occupying family, referred to as the Resident. The Landlord leases to the Resident the premises located at 2214-A Sunnyside Drive, Charleston, SC 29403

The premises leased are for the exclusive use and occupancy of the Resident and the Resident's household consisting of the following named persons who will live in the dwelling unit:

Name	Date of Birth	Social Security Number
Katrina Brown	1/1978	
[REDACTED]	2002	
A [REDACTED] C [REDACTED]	1998	

Any additions to the household members listed above require the advance written approval of the Landlord. This includes Live-In Aides and foster children or adults, but excludes natural births. The Landlord shall approve the additions if they pass the screening and an appropriate size unit is available. Deletions from the household shall be reported to the Landlord in writing, within ten (10) days. If the Resident is incapable of complying with this Lease, the Landlord should contact the following person:

This person's address is _____ and phone number is _____

2. LEASE TERM: This Lease shall begin on 12/16/2015. The term shall be one year and shall renew automatically for another year, unless terminated as provided by this Lease.

3. RENTAL PAYMENT: Resident shall pay monthly rent of \$ (88.00). If this Lease begins on a day other than the first day of the month, the prorated rent shall be \$ 0.00.

☐ This rent is based on the Authority-determined flat rent for this unit.

☒ This rent is based on the income and other information reported by the Resident.
(Check one)

Families may change rent calculation methods at any recertification. Families who have chosen the flat rent option may request a reexamination and change to the formula-based method at any time if the family's income has decreased, their on-going expenses for such purposes as child care and medical care have changed or any other circumstances that create a hardship for the family that would be alleviated by a change.

This amount is due on the first day of each month at the Housing Authority of the City of Charleston office and shall remain in effect until adjusted in accordance with the provisions of this lease. If a reasonable accommodation on where to pay rent is needed, other arrangements can be made. Cash payments are not acceptable.

If Resident fails to make the rent payment by the fifth working day of the month, the Authority can begin the eviction process. A \$15 late charge will be assessed to cover the added costs of a rent payment received after the fifth working day of the month. An additional \$15 late fee will be assessed if rent is not paid by close of business on the fifteenth working day. The Authority shall provide written notice of the amount of the charge. A check returned for non-sufficient funds shall be considered non-payment of rent and in addition to the late charge a \$30 returned check fee will be charged.

If a family is paying the minimum rent and its circumstances change creating an inability to pay the rent, the family may request suspension of the minimum rent because of a recognized hardship. In the event legal proceedings are required to recover possession of the premises, the Resident will be charged with the actual cost of such proceedings.

4. SECURITY DEPOSIT: The Resident will pay the amount of \$ 150.00 to the Landlord as a Security Deposit.

With the approval of the Landlord, the Security Deposit may be made in three payments - or one third with their first payment, one third with their second, and one third with their third payment. The Landlord will hold this security deposit for the period the Resident occupies the dwelling unit. The Landlord shall not use the Security Deposit for rent or other charges while the Resident is living in the dwelling unit.

Within 30 days after the Resident has permanently moved out of the dwelling unit, the Landlord shall return the Security Deposit after deducting whatever amount is needed to pay the cost of:

- unpaid rent;
- repair of damages that exceed normal wear and tear as listed on the Move-Out Inspection Report; and
- other charges due under the Lease.

The Landlord shall provide the Resident with a written list of any charges made against the Security Deposit. If the Resident disagrees with the amounts deducted, the Landlord will meet with the Resident to discuss the charges. In the event the Resident fails to give the Landlord 15 day notice before moving from the dwelling unit, any amounts of such security deposit remaining that have not been applied to any delinquent rents or to repair damage done to the premises by the Tenant, such deposits shall be applied to those amounts recoverable as liquidated damages as set forth in Section 18 of this Dwelling Lease Agreement.

5. OCCUPANCY: The Resident shall use the premises as a private dwelling for himself or herself and the persons named in of this Lease, with the exception of minor children born into the household during this tenancy, and shall assure its use is not for any other purpose without the written permission of the Landlord.

The Resident shall assure that:

- neither the Resident nor any persons other than those listed above and minor children which are born into the household during this tenancy, shall reside in the dwelling unit for more than fourteen (14) days each year without obtaining the prior written approval of the Landlord;
- neither the unit nor any part of the unit shall be subletted or assigned;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall engage in any unlawful activities in the unit, in the common areas, or on the property grounds;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall act in a manner that will disturb the rights or comfort of neighbors;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall engage in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or Authority employees;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall engage in any violent or drug-related criminal activity on or off the premises.

With the written permission of the Landlord, the Resident can incidentally use the premises for legally permissible income producing purposes so long as the business does not infringe on the rights of other Residents. All such business-related uses of the premises must meet all zoning requirements and the Resident must have the proper business licenses.

The Resident has the right to exclusive use and occupancy of the dwelling unit, which includes reasonable accommodation of the Resident's guests, visitors and, with the consent of the Landlord, fosters children and/or adults and the live-in care giver of the Resident's family.

6. CONDITION OF DWELLING: By signing this Lease and the Unit Inspection Report, the Resident acknowledges that the dwelling unit is safe, clean and in good condition, and that all appliances and equipment in the dwelling unit are in good working order as described on the Move-In Unit Inspection Report. This report, signed by both the Resident and Landlord, is attached to this Lease.

At the time of move out, the Landlord shall complete another inspection of the dwelling unit. When the Resident notifies the Landlord of his or her intent to vacate, the Landlord shall advise the Resident of their opportunity to participate in the move-out inspection.

7. UTILITIES: The Housing Authority of the City of Charleston shall provide the following utilities as a part of this lease agreement but shall not be liable for the failure to provide service if beyond its control: Water

The Resident agrees to pay for the following utilities: Gas and Electric

The Utility Allowance Schedule for Resident Paid Utilities and the Schedule of Excess Utility Charges are posted in the Landlord's office. The

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Resident shall pay any excess utility consumed in their unit over and above that set forth in the Schedule. Utility allowance revisions based on rate changes shall be effective retroactively to the first day of the month following the month in which the last rate change took place. Revisions based on changes in consumption or other reasons shall become effective at each family's next annual reexamination.

8. RENT RECERTIFICATIONS: Each year, by the date specified by the Landlord, Residents who are paying rent based on their income shall provide updated information regarding income, assets, expenses, and family composition. The Landlord shall verify the information supplied by the Resident and use the verified information to establish the amount of the Resident's rent for the next year. At the time of the annual review, the Landlord shall advise the Resident of any income that will be excluded from consideration. Increased earnings due to employment shall be excluded during the twelve month period following hire for families whose income has increased because of the employment of a family member who was previously unemployed for one or more years, because of participation in a self-sufficiency program or was assisted by a State TANF program within the last six months. Income reviews will be held every third year for Residents choosing the flat rent option. Residents who have chosen this option will be notified at the appropriate time for their recertification.

At the time of the review appointment the Resident may elect to change his or her rent choice option.

In cases where annual income cannot be projected for a twelve-month period or the Resident is reporting no income and Resident has chosen the percentage of income rent option, the Landlord will schedule special rent reviews every sixty (60) days. In addition, the Resident may request a change in the rent choice option before the date of the review if the family experiences a decrease in income; their circumstances have changed increasing their expenses for child care, medical, etc.; or other circumstances create a hardship on the family such that the formula method would be more financially feasible for the family.

Residents paying rent based on income may meet with the Landlord to discuss any change in rent resulting from the recertification process; and, if the Resident does not agree with the determination of Resident rent, the Resident may request a hearing in accordance with the Landlord's grievance procedures.

9. INTERIM RENT ADJUSTMENTS: Residents must within 10 days report to the Landlord any of the following changes in household circumstances when they occur between Annual Rent Recertifications:

- a. A member has been added to the family through birth, adoption, or court-awarded custody
- b. A household member is leaving or has left the family unit.

In addition, Residents paying rent based on a percentage of income may report the following activities that occur between Annual Rent Recertifications:

- a. A decrease in annual income;
- b. Childcare expenses for children under the age of 13 that are necessary to enable a member of the household to be employed or to go to school;
- c. Handicapped assistance expenses, which enable a family member to work;
- d. Medical expenses of elderly, disabled, or handicapped headed households that are not covered by insurance; or
- e. Other family changes that impact their adjusted income.

Notwithstanding the provisions listed above, a Resident's rent shall not be reduced if the decrease in the family's annual income is caused by a reduction in the welfare or public assistance benefits received by the family that is a result of the Resident's failure to comply with the conditions of the assistance program requiring participation in an economic self-sufficiency program or other work activities. In addition, if the decrease in the family's annual income is caused by a reduction in welfare or public assistance benefits received by the family that is the result of an act of fraud, such decrease in income shall not result in a rent reduction. In such cases, the amount of income to be attributed to the family shall include what the family would have received had they complied with the welfare requirements or had not committed an act of fraud.

For purposes of rent adjustments, the reduction of welfare or public assistance benefits to a family that occurs as a result of the expiration of a time limit for the receipt of assistance will not be considered a failure to comply with program requirements. Accordingly, a Resident's rent will be reduced as a result of such a decrease.

The Landlord shall verify the information provided by the Resident to determine if a decrease in the rent is warranted. If the Resident receives a letter or notice from HUD concerning the amount or verification of family income the communication shall be brought to the person responsible for income verification within 10 calendar days.

10. EFFECTIVE DATE OF RENT CHANGE: The Landlord shall give the Resident written notice of any change in the Resident's rent. The notice shall be signed by the Landlord, state the new amount the Resident is required to pay, and the effective date of the new rental amount.

a. **Rent Decreases:** The Landlord shall process rent decreases so that the lowered rent amount becomes effective on the first day of the month after the Resident reports the change in household circumstances. This rent change may be made retroactive to the appropriate date if less than five (5) working days have been given to the Landlord to process this change.

b. **Rent Increases:** The Landlord shall process rent increases so that the Resident is given no less than 30 days advance written notice of the amount due. Once the rental rate is established, it shall remain in effect until the effective date of the next annual review, unless another interim review and change is warranted or the Resident elects to change to or from flat rent calculation method.

11. RESIDENT OBLIGATION TO REPAY: Residents who pay rent based on income shall reimburse the Landlord for the difference between the rent that was paid and the rent that should have been charged if proper notice of income change had been given and if the following circumstances occur:

- a. Resident does not submit rent review information by the date specified in the Landlord's request; or
- b. Resident submits false information at Admission or at annual, special, or interim review.

Resident is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow U.S. Department of Housing and Urban Development's procedures for computing rent.

12. MAINTENANCE:

The Resident Shall Assure:

- a. that household members, guests or other persons under the Resident's control keep the dwelling unit and any other areas assigned for the Resident's exclusive use in a clean and safe condition;
- b. that household members, guests or other persons under the Resident's control use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
- c. that household members, guests or other persons under the Resident's control not litter the grounds or common areas of the property;
- d. that household members, guests or other persons under the Resident's control not undertake, or permit his or her family or guests to undertake any hazardous acts or do anything that will damage the property;
- e. that household members, guests or other persons under the Resident's control not destroy, deface, damage or remove any part of the dwelling unit, common areas, or property grounds;
- f. give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating equipment or any other part of the unit or related facilities;
- g. not park unregistered vehicles on the property or park any vehicle in an unauthorized location;
- h. remove garbage and other waste from the dwelling unit in a clean and safe manner; and
- i. pay reasonable charges for the repair of damages other than normal wear and tear to the premises, development buildings, facilities or common areas caused by the Resident, his or her household or guests, and to do so within 30 days after the receipt of the Landlord's itemized statement of the repair charges. The Damage and Service Charge Schedule is posted in the Landlord's office. If the item is not listed on the Schedule, the Resident shall be charged the actual cost the Landlord incurred.
- j. If the resident notices chipping or peeling paint in the unit, the resident will notify management immediately to have the paint remediated.

The Landlord Agrees To:

- a. maintain the premises and the property in decent and safe condition;
- b. comply with requirements of applicable building codes, housing codes materially affecting health and safety, disclose and abate the presence of known lead-based paint and lead-based paint hazards in the dwelling unit, and U.S. Department of Housing and Urban Development regulations;
- c. make necessary repairs to the premises;
- d. keep property buildings, facilities and common areas, not otherwise assigned to the Resident for maintenance and upkeep, in a clean and safe condition;
- e. maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the Landlord;

- f. provide and maintain appropriate appliances and facilities for the deposit of garbage, rubbish, and waste removed from the premises by the Resident; and
- g. supply running water and reasonable amounts of hot water and heat at appropriate times of the year (according to local customs and usage) except where heat or hot water is generated by an installation within the exclusive control of the Resident and supplied by a direct utility connection.

If the dwelling unit is rendered uninhabitable, regardless of cause:

- a. The Resident shall immediately notify the Landlord;
- b. The Landlord shall be responsible for repair of the unit within a reasonable time. If the Resident, household members or guests caused the damage, the reasonable cost of the repairs shall be charged to the Resident.
- c. The Landlord shall offer standard alternative accommodations, if available, when necessary repairs cannot be made within a reasonable time.
- d. The Landlord shall make a provision for rent abatement in proportion to the seriousness of the damage and loss in value if repairs are not made within a reasonable time. No abatement of rent shall occur if the Resident rejects the alternative accommodations or if the Resident, Resident's household, or guests caused the damage.

13. RESTRICTION ON ALTERATIONS: The Resident shall not do any of the following without first obtaining the Landlord's written permission:

- a. dismantle, change or remove any part of the appliances, fixtures or equipment in the dwelling unit;
- b. paint or install wallpaper or contact paper in the dwelling unit;
- c. attach awnings or window guards in the dwelling unit;
- d. attach or place any fixtures, signs, or fences on the building(s), the common areas, or the property grounds;
- e. attach any shelves, screen doors, or other permanent improvements in the dwelling unit;
- f. install or alter carpeting, resurface floors or alter woodwork;
- g. install washing machines, dryers, fans, heaters, or air conditioners, except as approved by the CHA;
- h. place any aerials, antennas or other electrical connections on the dwelling unit;
- i. install additional or different locks or gates on any doors or windows of the dwelling unit; or
- j. operate a business as an incidental use in the dwelling unit.

14. ACCESS BY LANDLORD: The Landlord shall provide two (2) days written advance notice to the Resident of his or her intent to enter the dwelling unit for the purpose of performing routine inspections and preventive maintenance, extermination or to show the dwelling unit for renting. The notice shall specify the date, time, and purpose for the entry. The Resident shall permit the Landlord, his or her agents, or other persons, when accompanied by the Landlord, to enter the dwelling unit for these purposes. In the event that the Resident and all adult members of the household are absent from the dwelling unit at the time of entry, the Landlord shall leave a card stating the date, time and name of the person entering the dwelling unit and the purpose of the visit.

The Landlord may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe an emergency exists.

15. SIZE OF DWELLING: The Resident understands that the Landlord assigns dwelling units according to the Occupancy Standards published in its Admissions and Continued Occupancy Policy (ACOP). The Standards consider the type (such as dwelling units designed for the elderly or handicapped) and size of the dwelling unit required by the number of household members, if the Resident is or becomes eligible for a different type or size dwelling unit and an appropriate dwelling unit under this program and the Landlord's transfer policy becomes available, the Resident shall be given a reasonable period of time to move. This time shall not exceed ten (10) days from date notification unless an unusual hardship condition exists. If the Resident fails to move to a designated dwelling unit within the notice period specified by the Landlord, the Landlord may terminate this lease or the Resident will be responsible for rent payment of the two units that are in his/her possession.

If the Landlord determines that a Resident must transfer to another unit based on family composition, the Landlord shall notify the Resident. The Resident may ask for an explanation stating the specific grounds of the determination, and if the Resident does not agree with the determination, the Resident may request a hearing in accordance with the Landlord's grievance procedures.

16. LEASE TERMINATION BY LANDLORD: Any termination of this Lease shall be carried out in accordance with U.S. Department of Housing and Urban Development regulations, State and local law, and the terms of this Lease.

The Landlord shall not terminate or refuse to renew the Lease other than for serious or repeated violation of material terms of the Lease, such as, but not limited to, the following:

- a. nonpayment of rent or other charges due under the Lease (i.e. utilities), or repeated chronic late payment of rent (three times in a twelve month period);
- b. failure to provide timely and accurate statements of income, assets, expenses and family composition at Admission, Interim, Special or Annual Rent Recertifications, to attend scheduled reexamination interviews or to cooperate in the verification process if the Resident has chosen to pay rent based on a percentage of income;
- c. furnishing false or misleading information during the application or review process;
- d. assignment or subleasing of the premises or providing accommodation for boarders or lodgers;
- e. use of the premises for purposes other than solely as a dwelling unit for the Resident and Resident's household as identified in this Lease, or permitting its use for any other purpose without the written permission of the Landlord;
- f. failure of any household members, guest or other persons under the Resident's control to abide by necessary and reasonable rules made by the Landlord for the benefit and well-being of the housing development and the Residents;
- g. failure to abide by applicable building and housing codes materially affecting health or safety;
- h. failure to dispose of garbage, waste and rubbish in a safe and sanitary manner;
- i. failure to use electrical, plumbing, sanitary, heating, ventilating, air conditioning and other equipment, including elevators, in a safe manner;
- j. acts of destruction, defacement or removal of any part of the premises by any household members, guest or other persons under the Resident's control or failure to cause guests to refrain from such acts;
- k. failure to pay reasonable charges for the repair of damages to the premises, property buildings, facilities or common areas;
- l. to act in a cooperative manner with neighbors and the Authority's staff. To refrain from and cause members of Tenant's household or guests to refrain from acting or speaking in an abusive or threatening manner toward neighbors and the Authority's staff,
- m. failure to abide by Landlord pet policy;
- n. any violent or drug-related criminal activity performed by any household members, guest or other persons under the Resident's control on or off the premises, not just on or near the premises;
- o. alcohol abuse that the Landlord determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- p. failure to perform required community service or be exempted therefrom, as determined by HUD;
- q. failure to allow inspection of the dwelling unit;
- r. determination that a family member has knowingly permitted an ineligible non-citizen not listed on the lease to permanently reside in their public housing unit;
- s. determination or discovery that a resident is a registered sex offender;
- t. the Housing Authority reserves the right to prohibit non-residents and persons not on the dwelling lease involved in criminal activity from placing themselves or their property on CHA premises. This prohibition or ban of these persons may be made with or without the consent of the tenant; or
- u. any other good cause.

17. NOTICE OF LEASE TERMINATION: If the Landlord proposes to terminate this Lease, the Resident shall be given written notice of the proposed termination, as listed below:

- a. for failure to pay rent, at least fourteen (14) days;
- b. for creation or maintenance of a threat to health or safety of other Residents or Landlord's employees, a reasonable time based on the urgency of the situation; or
- c. for all other cases, thirty (30) days, unless State law permits a shorter period.

The Notice to Vacate required by State or local law may be combined with or run concurrently with a Notice of Lease termination required by this lease.

The Notice of Lease Termination from the Landlord shall be either personally delivered to the Resident or to an adult member of the Resident's family residing in the dwelling unit, or sent to the Resident by Certified Mail, properly addressed, postage pre-paid. The notice shall:

- a. specify the date the Lease shall be terminated;

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- b. state the grounds for termination in enough detail for the Resident to prepare a defense. The Landlord shall rely solely on the grounds stated in the Notice of Lease Termination in the event eviction action is initiated;
- c. advise the Resident of the right to reply as he or she may wish, to examine the Landlord's documents directly relevant to the termination or eviction, to use the Grievance Policy to contest the termination, and/or to defend the action in court.

18. LEASE TERMINATION BY RESIDENT: The Resident shall give the Landlord 15 days written notice before moving from the dwelling unit. If the Resident does not give the Landlord 15 days notice before moving from dwelling unit, the Resident and the Landlord agree that the Landlord shall have the right and be entitled to collect as liquidated damages an amount up to or equal to \$150.00 (Security deposit) as remedy for such nonperformance. The amount specified herein as liquidated damages is completely separate from any amount the Landlord may be entitled under this Agreement by reason of damage to the premises by the Tenant, his family, guest, or agents, or delinquent rents, or other outstanding fees. The liquidated damages will be deducted from the balance of remaining security deposit once all delinquent rents, fees for damages and any other outstanding fees are applied to the deposit. If the Resident disagrees with the liquidated damages deducted, the Landlord will meet with the resident to discuss the charges.

Early Termination by Resident Without 15 Days Notice:

\$150.00 = Security Deposit

- unpaid rent
- repair of damage that exceed normal wear and tear as listed on the Move-Out Inspection Report
- other charges due under the lease
- liquidated damages

\$0 Balance Owed to Resident

Therefore, Landlord and Resident agree that the failure of the Resident to give the Landlord 15 days notice before moving from the dwelling unit would result in additional damages to the Landlord that cannot be mitigated, although it would be impracticable or extremely difficult to fix the actual amount of such damages, and in such event the parties stipulate and agree that the Landlord shall have the right to liquidated damages up to the amount of \$150.00 (Security deposit), which the parties agree is a reasonable estimate of such damages.

19. TERMINATION OF LEASE UPON DEATH OR INCAPACITY OF RESIDENT: Upon the death of the Resident, or if there is more than one Resident, upon the death of all Residents, either the Landlord or the personal representative of the Resident's estate may terminate this Lease upon 30 days written notice, to be effective on the last day of a calendar month. If full notice is not given, the Resident's estate shall be liable for rent to the end of the notice period or to the date the unit is re-rented, whichever date comes first. The termination of a Lease under this section shall not relieve the Resident's estate from liability either for payment of rent or other amounts owed prior to or during the notice period, or for the payment of amounts necessary to restore the premises to their condition at the beginning of the Resident's occupancy, normal wear and tear excepted.

If during the term of this Lease the Resident, by reason of physical or mental impairment, is no longer able to comply with the material provisions of this Lease and the Landlord cannot make a reasonable accommodation to enable the Resident to comply with the Lease; then action shall be taken. The Landlord will assist the Resident or designated member(s) of the Resident's family to move the Resident to more suitable housing. If there are no family members, the Landlord will work with appropriate agencies to secure suitable housing. This Lease will terminate upon the Resident moving from the unit.

20. PROPERTY ABANDONMENT: If a Resident abandons the dwelling unit, the Landlord shall take possession of the Resident's personal property remaining on the premises.

21. VEHICLES: All motorized vehicles parked on the Housing Authority of the City of Charleston's property must comply with the following:

- a. The storage of Resident/Non-Resident vehicle(s) is strictly prohibited. If not immediately removed the vehicle(s) will be towed at the owner's expense.
- b. Any vehicle(s) within the boundaries of the property found to be in an inoperable condition, or illegal to operate, will be towed at the owner's expense. Inoperable condition included, but is not limited to, flat or missing tire(s), mechanical problem(s), (i.e. motor will not start, drive train problem, no brakes) or damage from a collision. Illegal to operate includes, but is not limited to, a broken windshield, or headlamp, no current registration, no current emission approval (if applicable), or no current license tags.
- c. The Housing Authority of the City of Charleston will comply and assist the authorities in enforcement of local parking laws.

22. DELIVERY OF NOTICES:

Notice by Landlord: Any notice from the Landlord shall be in writing and either personally delivered to the Resident or to an adult member of the Resident's family residing in the dwelling unit, or sent to the Resident by Certified Mail, properly addressed, postage pre-paid.

Notice by Resident: Any notice to the Landlord shall be in writing, and either personally delivered to the Landlord at the Landlord's Office, or sent to Landlord by first-class mail, postage pre-paid and addressed to: The Housing Authority of the City of Charleston.

If the Resident is visually impaired, notices shall be in accessible format.

23. GRIEVANCES: All individual grievances or appeals, with the exception of those cases concerning eviction or termination of tenancy which are based upon a Resident's creation or maintenance of a threat to health or safety of other Residents or Landlord employees, shall be processed under the Grievance Policy. This policy is posted in the Landlord's Office where copies are available upon request.

Before the Landlord shall schedule a Grievance Hearing for any grievance concerning the amount of rent the Landlord claims is due, the Resident must first bring his or her rent account current by paying to the Landlord an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. After the hearing is scheduled, the Resident shall continue to deposit this same monthly rent amount into the Landlord's escrow account until the complaint is resolved by the decision of the hearing officer or panel.

When the Housing Authority is required to afford the Resident the opportunity for a hearing in accordance with the authority's grievance procedure for a grievance concerning the Lease termination, the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the Resident to request a grievance hearing has expired, and (if a hearing was timely requested by the Resident) the grievance process has been completed.

24. HOUSE RULES: The Resident agrees to obey any House Rules, which are reasonably related to the safety care and cleanliness of the building and the safety comfort and convenience of the Residents. Such rules may be modified by the Landlord from time to time provided that the Resident receives written notice of the proposed change, reasons for the change and an opportunity to submit written comments during a 30 day comment period at least 30 days before the proposed effective date of the change in the Rule. Existing House Rules, if any, are posted in the management office and are attached to this Lease.

25. DISCRIMINATION PROHIBITED: The Landlord shall not discriminate based upon race, color, creed, religion, national origin, sex, marital status, age, handicap or disability, familial status, or recipients of public assistance and shall comply with all nondiscrimination requirements of Federal, State and local law.

26. PROGRAM COMPLIANCE: Failure of the Resident to comply with Low-Income Public Housing Program requirements can be construed as a lease violation and the Landlord may proceed with termination in accordance with this Lease.

27. ATTACHMENTS TO THE LEASE: The Resident certifies that he/she has received a copy of this Lease and the following Attachments to this Lease, and understands that these Attachments are part of this Lease.

Attachments:

Signatures
RESIDENT:

1) Katrina Bamm 3-17-15 Charles C. Bunnell 12/16/15
Date Date

2) _____
Date

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HOUSING AUTHORITY OF THE CITY OF CHARLESTON
DWELLING LEASE AGREEMENT

1. **PARTIES AND DWELLING UNIT:** The parties to this Lease are The Housing Authority of the City of Charleston, referred to as Landlord, and, the occupying family, referred to as the Resident. The Landlord leases to the Resident the premises located at 2214-A Sunnyside Drive, Charleston SC 29403.

The premises leased are for the exclusive use and occupancy of the Resident and the Resident's household consisting of the following named persons who will live in the dwelling unit:

Name	Date of Birth	Social Security Number
Katrina Brown	1978	
[REDACTED]	2002	
[REDACTED]	1998	

Any additions to the household members listed above require the advance written approval of the Landlord. This includes Live-in Aides and foster children or adults, but excludes natural births. The Landlord shall approve the additions if they pass the screening and an appropriate size unit is available. Deletions from the household shall be reported to the Landlord in writing, within ten (10) days. If the Resident is incapable of complying with this Lease, the Landlord should contact the following person:

This person's address is _____ and phone number is _____.

2. **LEASE TERM:** This Lease shall begin on February 1, 2015. The term shall be one year and shall renew automatically for another year, unless terminated as provided by this Lease.

3. **RENTAL PAYMENT:** Resident shall pay monthly rent of \$(52.00). If this Lease begins on a day other than the first day of the month, the prorated rent shall be \$n/a.

☐ This rent is based on the Authority-determined flat rent for this unit.

☒ This rent is based on the income and other information reported by the Resident.

(Check one)

Families may change rent calculation methods at any recertification. Families who have chosen the flat rent option may request a reexamination and change to the formula-based method at any time if the family's income has decreased, their on-going expenses for such purposes as child care and medical care have changed or any other circumstances that create a hardship for the family that would be alleviated by a change.

This amount is due on the first day of each month at the Housing Authority of the City of Charleston office and shall remain in effect until adjusted in accordance with the provisions of this lease, if a reasonable accommodation on where to pay rent is needed, other arrangements can be made. Cash payments are not acceptable.

If Resident fails to make the rent payment by the fifth working day of the month, the Authority can begin the eviction process. A \$15 late charge will be assessed to cover the added costs of a rent payment received after the fifth working day of the month. An additional \$15 late fee will be assessed if rent is not paid by close of business on the fifteenth working day. The Authority shall provide written notice of the amount of the charge. A check returned for non-sufficient funds shall be considered non-payment of rent and in addition to the late charge a \$30 returned check fee will be charged.

If a family is paying the minimum rent and its circumstances change creating an inability to pay the rent, the family may request suspension of the minimum rent because of a recognized hardship. In the event legal proceedings are required to recover possession of the premises, the Resident will be charged with the actual cost of such proceedings.

4. **SECURITY DEPOSIT:** The Resident will pay the amount of \$150.00 to the Landlord as a Security Deposit.

With the approval of the Landlord, the Security Deposit may be made in three payments - or one third with their first payment, one third with their second, and one third with their third payment. The Landlord will hold this security deposit for the period the Resident occupies the dwelling unit. The Landlord shall not use the Security Deposit for rent or other charges while the Resident is living in the dwelling unit.

Within 30 days after the Resident has permanently moved out of the dwelling unit, the Landlord shall return the Security Deposit after deducting whatever amount is needed to pay the cost of:

- unpaid rent;
- repair of damages that exceed normal wear and tear as listed on the Move-Out Inspection Report; and
- other charges due under the Lease.

The Landlord shall provide the Resident with a written list of any charges made against the Security Deposit. If the Resident disagrees with the amounts deducted, the Landlord will meet with the Resident to discuss the charges. In the event the Resident fails to give the Landlord 15 day notice before moving from the dwelling unit, any amounts of such security deposit remaining that have not been applied to any delinquent rents or to repair damage done to the premises by the Tenant, such deposits shall be applied to those amounts recoverable as liquidated damages as set forth in Section 18 of this Dwelling Lease Agreement.

5. **OCCUPANCY:** The Resident shall use the premises as a private dwelling for himself or herself and the persons named in of this Lease, with the exception of minor children born into the household during this tenancy, and shall assure its use is not for any other purpose without the written permission of the Landlord.

The Resident shall assure that:

- neither the Resident nor any persons other than those listed above and minor children which are born into the household during this tenancy, shall reside in the dwelling unit for more than fourteen (14) days each year without obtaining the prior written approval of the Landlord;
- neither the unit nor any part of the unit shall be subletted or assigned;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall engage in any unlawful activities in the unit, in the common areas, or on the property grounds;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall act in a manner that will disturb the rights or comfort of neighbors;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall engage in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or Authority employees;
- neither the Resident nor any household member, guest, or other persons under the Resident's control shall engage in any violent or drug-related criminal activity on or off the premises.

With the written permission of the Landlord, the Resident can incidentally use the premises for legally permissible income producing purposes so long as the business does not infringe on the rights of other Residents. All such business-related uses of the premises must meet all zoning requirements and the Resident must have the proper business licenses.

The Resident has the right to exclusive use and occupancy of the dwelling unit, which includes reasonable accommodation of the Resident's guests, visitors and, with the consent of the Landlord, fosters children and/or adults and the live-in care giver of the Resident's family.

6. **CONDITION OF DWELLING:** By signing this Lease and the Unit Inspection Report, the Resident acknowledges that the dwelling unit is safe, clean and in good condition, and that all appliances and equipment in the dwelling unit are in good working order as described on the Move-In Unit Inspection Report. This report, signed by both the Resident and Landlord, is attached to this Lease.

At the time of move out, the Landlord shall complete another inspection of the dwelling unit. When the Resident notifies the Landlord of his or her intent to vacate, the Landlord shall advise the Resident of their opportunity to participate in the move-out inspection.

7. **UTILITIES:** The Housing Authority of the City of Charleston shall provide the following utilities as a part of this lease agreement but shall not be liable for the failure to provide service if beyond its control: water

The Resident agrees to pay for the following utilities: electric and gas

The Utility Allowance Schedule for Resident Paid Utilities and the Schedule of Excess Utility Charges are posted in the Landlord's office. The

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Resident shall pay for utilities consumed in their unit over and above that set forth in the Schedule. Monthly allowance revisions based on rate changes shall be retroactive to the first day of the month following the month in which the rate change took place. Revisions based on changes in consumption or other reasons shall become effective at each family's next annual reexamination.

8. RENT RECERTIFICATIONS: Each year, by the date specified by the Landlord, Residents who are paying rent based on their income shall provide updated information regarding income, assets, expenses, and family composition. The Landlord shall verify the information supplied by the Resident and use the verified information to establish the amount of the Resident's rent for the next year. At the time of the annual review, the Landlord shall advise the Resident of any income that will be excluded from consideration. Increased earnings due to employment shall be excluded during the twelve month period following hire for families whose income has increased because of the employment of a family member who was previously unemployed for one or more years, because of participation in a self-sufficiency program or was assisted by a State TANF program within the last six months. Income reviews will be held every third year for Residents choosing the flat rent option. Residents who have chosen this option will be notified at the appropriate time for their recertification.

At the time of the review appointment the Resident may elect to change his or her rent choice option.

In cases where annual income cannot be projected for a twelve-month period or the Resident is reporting no income and Resident has chosen the percentage of income rent option, the Landlord will schedule special rent reviews every sixty (60) days. In addition, the Resident may request a change in the rent choice option before the date of the review if the family experiences a decrease in income; their circumstances have changed increasing their expenses for child care, medical, etc.; or other circumstances create a hardship on the family such that the formula method would be more financially feasible for the family.

Residents paying rent based on income may meet with the Landlord to discuss any change in rent resulting from the recertification process; and, if the Resident does not agree with the determination of Resident rent, the Resident may request a hearing in accordance with the Landlord's grievance procedures.

9. INTERIM RENT ADJUSTMENTS: Residents must within 10 days report to the Landlord any of the following changes in household circumstances when they occur between Annual Rent Recertifications:

- A member has been added to the family through birth, adoption, or court-awarded custody
- A household member is leaving or has left the family unit

In addition, Residents paying rent based on a percentage of income may report the following activities that occur between Annual Rent Recertifications:

- A decrease in annual income;
- Childcare expenses for children under the age of 13 that are necessary to enable a member of the household to be employed or to go to school;
- Handicapped assistance expenses, which enable a family member to work;
- Medical expenses of elderly, disabled, or handicapped headed households that are not covered by insurance; or
- Other family changes that impact their adjusted income.

Notwithstanding the provisions listed above, a Resident's rent shall not be reduced if the decrease in the family's annual income is caused by a reduction in the welfare or public assistance benefits received by the family that is a result of the Resident's failure to comply with the conditions of the assistance program requiring participation in an economic self-sufficiency program or other work activities. In addition, if the decrease in the family's annual income is caused by a reduction in welfare or public assistance benefits received by the family that is the result of an act of fraud, such decrease in income shall not result in a rent reduction. In such cases, the amount of income to be attributed to the family shall include what the family would have received had they complied with the welfare requirements or had not committed an act of fraud.

For purposes of rent adjustments, the reduction of welfare or public assistance benefits to a family that occurs as a result of the expiration of a time limit for the receipt of assistance will not be considered a failure to comply with program requirements. Accordingly, a Resident's rent will be reduced as a result of such a decrease.

The Landlord shall verify the information provided by the Resident to determine if a decrease in the rent is warranted. If the Resident receives a letter or notice from HUD concerning the amount or verification of family income the communication shall be brought to the person responsible for income verification within 10 calendar days.

10. EFFECTIVE DATE OF RENT CHANGE: The Landlord shall give the Resident written notice of any change in the Resident's rent. The notice shall be signed by the Landlord, state the new amount the Resident is required to pay, and the effective date of the new rental amount.

- Rent Decreases:** The Landlord shall process rent decreases so that the lowered rent amount becomes effective on the first day of the month after the Resident reports the change in household circumstances. This rent change may be made retroactive to the appropriate date if less than five (5) working days have been given to the Landlord to process this change.
- Rent Increases:** The Landlord shall process rent increases so that the Resident is given no less than 30 days advance written notice of the amount due. Once the rental rate is established, it shall remain in effect until the effective date of the next annual review, unless another interim review and change is warranted or the Resident elects to change to or from flat rent calculation method.

11. RESIDENT OBLIGATION TO REPAY: Residents who pay rent based on income shall reimburse the Landlord for the difference between the rent that was paid and the rent that should have been charged if proper notice of income change had been given and if the following circumstances occur:

- Resident does not submit rent review information by the date specified in the Landlord's request; or
 - Resident submits false information at Admission or at annual, special, or interim review.
- Resident is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow U.S. Department of Housing and Urban Development's procedures for computing rent.

12. MAINTENANCE:

The Resident Shall Assure:

- that household members, guests or other persons under the Resident's control keep the dwelling unit and any other areas assigned for the Resident's exclusive use in a clean and safe condition;
 - that household members, guests or other persons under the Resident's control use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
 - that household members, guests or other persons under the Resident's control not litter the grounds or common areas of the property;
 - that household members, guests or other persons under the Resident's control not undertake, or permit his or her family or guests to undertake any hazardous acts or do anything that will damage the property;
 - that household members, guests or other persons under the Resident's control not destroy, deface, damage or remove any part of the dwelling unit, common areas, or property grounds;
 - give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating equipment or any other part of the unit or related facilities;
 - not park unregistered vehicles on the property or park any vehicle in an unauthorized location;
 - remove garbage and other waste from the dwelling unit in a clean and safe manner; and
 - pay reasonable charges for the repair of damages other than normal wear and tear to the premises, development buildings, facilities or common areas caused by the Resident, his or her household or guests, and to do so within 30 days after the receipt of the Landlord's itemized statement of the repair charges. The Damage and Service Charge Schedule is posted in the Landlord's office. If the item is not listed on the Schedule, the Resident shall be charged the actual cost the Landlord incurred.
- If the resident notices chipping or peeling paint in the unit, the resident will notify management immediately to have the paint remediated.

The Landlord Agrees To:

- maintain the premises and the property in decent and safe condition;
- comply with requirements of applicable building codes, housing codes materially affecting health and safety, disclose and abate the presence of known lead-based paint and lead-based paint hazards in the dwelling unit, and U.S. Department of Housing and Urban Development regulations;
- make necessary repairs to the premises;
- keep property buildings, facilities and common areas, not otherwise assigned to the Resident for maintenance and upkeep, in a clean and safe condition;
- maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the Landlord;

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- f. provide and maintain appropriate receptacles and facilities for the deposit of garbage, rubbish, and other waste removed from the premises by the Resident;
 - g. supply running water and reasonable amounts of hot water and heat at appropriate times of the year (according to local customs and usage) except where heat or hot water is generated by an installation within the exclusive control of the Resident and supplied by a direct utility connection.
- If the dwelling unit is rendered uninhabitable, regardless of cause:
- a. The Resident shall immediately notify the Landlord;
 - b. The Landlord shall be responsible for repair of the unit within a reasonable time. If the Resident, household members or guests caused the damage, the reasonable cost of the repairs shall be charged to the Resident.
 - c. The Landlord shall offer standard alternative accommodations, if available, when necessary repairs cannot be made within a reasonable time.
 - d. The Landlord shall make a provision for rent abatement in proportion to the seriousness of the damage and loss in value if repairs are not made within a reasonable time. No abatement of rent shall occur if the Resident rejects the alternative accommodations or if the Resident, Resident's household, or guests caused the damage.
- 13. RESTRICTION ON ALTERATIONS:** The Resident shall not do any of the following without first obtaining the Landlord's written permission:
- a. dismantle, change or remove any part of the appliances, fixtures or equipment in the dwelling unit;
 - b. paint or install wallpaper or contact paper in the dwelling unit;
 - c. attach awnings or window guards in the dwelling unit;
 - d. attach or place any fixtures, signs, or fences on the building(s), the common areas, or the property grounds;
 - e. attach any shelves, screen doors, or other permanent improvements in the dwelling unit;
 - f. install or alter carpeting, resurface floors or alter woodwork;
 - g. install washing machines, dryers, fans, heaters, or air conditioners, except as approved by the CHA;
 - h. place any aerials, antennas or other electrical connections on the dwelling unit;
 - i. install additional or different locks or gates on any doors or windows of the dwelling unit; or
 - j. operate a business as an incidental use in the dwelling unit.
- 14. ACCESS BY LANDLORD:** The Landlord shall provide two (2) days written advance notice to the Resident of his or her intent to enter the dwelling unit for the purpose of performing routine inspections and preventive maintenance, extermination or to show the dwelling unit for re-renting. The notice shall specify the date, time, and purpose for the entry. The Resident shall permit the Landlord, his or her agents, or other persons, when accompanied by the Landlord, to enter the dwelling unit for these purposes. In the event that the Resident and all adult members of the household are absent from the dwelling unit at the time of entry, the Landlord shall leave a card stating the date, time and name of the person entering the dwelling unit and the purpose of the visit. The Landlord may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe an emergency exists.
- 15. SIZE OF DWELLING:** The Resident understands that the Landlord assigns dwelling units according to the Occupancy Standards published in its Admissions and Continued Occupancy Policy (ACOP). The Standards consider the type (such as dwelling units designed for the elderly or handicapped) and size of the dwelling unit required by the number of household members, if the Resident is or becomes eligible for a different type or size dwelling unit and an appropriate dwelling unit under this program and the Landlord's transfer policy becomes available, the Resident shall be given a reasonable period of time to move. This time shall not exceed ten (10) days from date notification unless an unusual hardship condition exists. If the Resident fails to move to a designated dwelling unit within the notice period specified by the Landlord, the Landlord may terminate this lease or the resident will be responsible for rent payment of the two units that are in his/her possession. If the Landlord determines that a Resident must transfer to another unit based on family composition, the Landlord shall notify the Resident. The Resident may ask for an explanation stating the specific grounds of the determination, and if the Resident does not agree with the determination, the Resident may request a hearing in accordance with the Landlord's grievance procedures.
- 16. LEASE TERMINATION BY LANDLORD:** Any termination of this Lease shall be carried out in accordance with U.S. Department of Housing and Urban Development regulations, State and local law, and the terms of this Lease. The Landlord shall not terminate or refuse to renew the Lease other than for serious or repeated violation of material terms of the Lease, such as, but not limited to, the following:
- a. nonpayment of rent or other charges due under the Lease (i.e. utilities), or repeated chronic late payment of rent (three times in a twelve month period);
 - b. failure to provide timely and accurate statements of income, assets, expenses and family composition at Admission, Interim, Special or Annual Rent Recertifications, to attend scheduled reexamination interviews or to cooperate in the verification process if the Resident has chosen to pay rent based on a percentage of income;
 - c. furnishing false or misleading information during the application or review process;
 - d. assignment or subleasing of the premises or providing accommodation for boarders or lodgers;
 - e. use of the premises for purposes other than solely as a dwelling unit for the Resident and Resident's household as identified in this Lease, or permitting its use for any other purpose without the written permission of the Landlord;
 - f. failure of any household members, guest or other persons under the Resident's control to abide by necessary and reasonable rules made by the Landlord for the benefit and well-being of the housing development and the Residents;
 - g. failure to abide by applicable building and housing codes materially affecting health or safety;
 - h. failure to dispose of garbage, waste and rubbish in a safe and sanitary manner;
 - i. failure to use electrical, plumbing, sanitary, heating, ventilating, air conditioning and other equipment, including elevators, in a safe manner;
 - j. acts of destruction, defacement or removal of any part of the premises by any household members, guest or other persons under the Resident's control or failure to cause guests to refrain from such acts;
 - k. failure to pay reasonable charges for the repair of damages to the premises, property buildings, facilities or common areas;
 - l. to act in a cooperative manner with neighbors and the Authority's staff. To refrain from and cause members of Tenant's household or guests to refrain from acting or speaking in an abusive or threatening manner toward neighbors and the Authority's staff,
 - m. failure to abide by Landlord pet policy;
 - n. any violent or drug-related criminal activity performed by any household members, guest or other persons under the Resident's control on or off the premises, not just on or near the premises;
 - o. alcohol abuse that the Landlord determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
 - p. failure to perform required community service or be exempted therefrom, as determined by HUD;
 - q. failure to allow inspection of the dwelling unit;
 - r. determination that a family member has knowingly permitted an ineligible non-citizen not listed on the lease to permanently reside in their public housing unit;
 - s. determination or discovery that a resident is a registered sex offender;
 - t. the Housing Authority reserves the right to prohibit non-residents and persons not on the dwelling lease involved in criminal activity from placing themselves or their property on CHA premises. This prohibition or ban of these persons may be made with or without the consent of the tenant; or
 - u. any other good cause.
- 17. NOTICE OF LEASE TERMINATION:** If the Landlord proposes to terminate this Lease, the Resident shall be given written notice of the proposed termination, as listed below:
- a. for failure to pay rent, at least fourteen (14) days;
 - b. for creation or maintenance of a threat to health or safety of other Residents or Landlord's employees, a reasonable time based on the urgency of the situation; or
 - c. for all other cases, thirty (30) days, unless State law permits a shorter period.
- The Notice to Vacate required by State or local law may be combined with or run concurrently with a Notice of Lease termination required by this lease.
- The Notice of Lease Termination from the Landlord shall be either personally delivered to the Resident or to an adult member of the Resident's family residing in the dwelling unit, or sent to the Resident by Certified Mail, properly addressed, postage pre-paid. The notice shall:
- a. specify the date the Lease shall be terminated;

- b. state the grounds for termination with enough detail for the Resident to prepare a defense. The Landlord shall rely solely on the grounds stated in the Lease Termination in the event eviction action is initiated;
- c. advise the Resident of the right to reply as he or she may wish, to examine the Landlord's documents directly relevant to the termination or eviction, to use the Grievance Policy to contest the termination, and/or to defend the action in court.

18. LEASE TERMINATION BY RESIDENT: The Resident shall give the Landlord 15 days written notice before moving from the dwelling unit. If the Resident does not give the Landlord 15 days notice before moving from dwelling unit, the Resident and the Landlord agree that the Landlord shall have the right and be entitled to collect as liquidated damages an amount up to or equal to \$150.00 (Security deposit) as remedy for such nonperformance. The amount specified herein as liquidated damages is completely separate from any amount the Landlord may be entitled under this Agreement by reason of damage to the premises by the Tenant, his family, guest, or agents, or delinquent rents, or other outstanding fees. The liquidated damages will be deducted from the balance of remaining security deposit once all delinquent rents, fees for damages and any other outstanding fees are applied to the deposit. If the Resident disagrees with the liquidated damages deducted, the Landlord will meet with the resident to discuss the charges.

Early Termination by Resident Without 15 Days Notice:

\$150 = Security Deposit

- unpaid rent
- repair of damage that exceed normal wear and tear as listed on the Move-Out Inspection Report
- other charges due under the lease
- liquidated damages

\$0 Balance Owed to Resident

Therefore, Landlord and Resident agree that the failure of the Resident to give the Landlord 15 days notice before moving from the dwelling unit would result in additional damages to the Landlord that cannot be mitigated, although it would be impracticable or extremely difficult to fix the actual amount of such damages, and in such event the parties stipulate and agree that the Landlord shall have the right to liquidated damages up to the amount of \$150.00 (Security deposit), which the parties agree is a reasonable estimate of such damages.

19. TERMINATION OF LEASE UPON DEATH OR INCAPACITY OF RESIDENT: Upon the death of the Resident, or if there is more than one Resident, upon the death of all Residents, either the Landlord or the personal representative of the Resident's estate may terminate this Lease upon 30 days written notice, to be effective on the last day of a calendar month. If full notice is not given, the Resident's estate shall be liable for rent to the end of the notice period or to the date the unit is re-rented, whichever date comes first. The termination of a Lease under this section shall not relieve the Resident's estate from liability either for payment of rent or other amounts owed prior to or during the notice period, or for the payment of amounts necessary to restore the premises to their condition at the beginning of the Resident's occupancy, normal wear and tear excepted.

If during the term of this Lease the Resident, by reason of physical or mental impairment, is no longer able to comply with the material provisions of this Lease and the Landlord cannot make a reasonable accommodation to enable the Resident to comply with the Lease; then action shall be taken. The Landlord will assist the Resident or designated member(s) of the Resident's family to move the Resident to more suitable housing. If there are no family members, the Landlord will work with appropriate agencies to secure suitable housing. This Lease will terminate upon the Resident moving from the unit.

20. PROPERTY ABANDONMENT: If a Resident abandons the dwelling unit, the Landlord shall take possession of the Resident's personal property remaining on the premises.

21. VEHICLES: All motorized vehicles parked on the Housing Authority of the City of Charleston's property must comply with the following:

- a. The storage of Resident/Non-Resident vehicle(s) is strictly prohibited. If not immediately removed the vehicle(s) will be towed at the owner's expense.
- b. Any vehicle(s) within the boundaries of the property found to be in an inoperable condition, or illegal to operate, will be towed at the owner's expense. Inoperable condition included, but is not limited to, flat or missing tires(s), mechanical problem(s), (i.e. motor will not start, drive train problem, no brakes) or damage from a collision. Illegal to operate includes, but is not limited to, a broken windshield, or headlamp, no current registration, no current emission approval (if applicable), or no current license tags.
- c. The Housing Authority of the City of Charleston will comply and assist the authorities in enforcement of local parking laws.

22. DELIVERY OF NOTICES:

Notice by Landlord: Any notice from the Landlord shall be in writing and either personally delivered to the Resident or to an adult member of the Resident's family residing in the dwelling unit, or sent to the Resident by Certified Mail, properly addressed, postage pre-paid.

Notice by Resident: Any notice to the Landlord shall be in writing, and either personally delivered to the Landlord at the Landlord's Office, or sent to Landlord by first-class mail, postage pre-paid and addressed to: The Housing Authority of the City of Charleston.

If the Resident is visually impaired, notices shall be in accessible format.

23. GRIEVANCES: All individual grievances or appeals, with the exception of those cases concerning eviction or termination of tenancy which are based upon a Resident's creation or maintenance of a threat to health or safety of other Residents or Landlord employees, shall be processed under the Grievance Policy. This policy is posted in the Landlord's Office where copies are available upon request.

Before the Landlord shall schedule a Grievance Hearing for any grievance concerning the amount of rent the Landlord claims is due, the Resident must first bring his or her rent account current by paying to the Landlord an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. After the hearing is scheduled, the Resident shall continue to deposit this same monthly rent amount into the Landlord's escrow account until the complaint is resolved by the decision of the hearing officer or panel.

When the Housing Authority is required to afford the Resident the opportunity for a hearing in accordance with the authority's grievance procedure for a grievance concerning the Lease termination, the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the Resident to request a grievance hearing has expired, and (if a hearing was timely requested by the Resident) the grievance process has been completed.

24. HOUSE RULES: The Resident agrees to obey any House Rules, which are reasonably related to the safety care and cleanliness of the building and the safety comfort and convenience of the Residents. Such rules may be modified by the Landlord from time to time provided that the Resident receives written notice of the proposed change, reasons for the change and an opportunity to submit written comments during a 30 day comment period at least 30 days before the proposed effective date of the change in the Rule. Existing House Rules, if any, are posted in the management office and are attached to this Lease.

25. DISCRIMINATION PROHIBITED: The Landlord shall not discriminate based upon race, color, creed, religion, national origin, sex, marital status, age, handicap or disability, familial status, or recipients of public assistance and shall comply with all nondiscrimination requirements of Federal, State and local law.

26. PROGRAM COMPLIANCE: Failure of the Resident to comply with Low-Income Public Housing Program requirements can be construed as a lease violation and the Landlord may proceed with termination in accordance with this Lease.

27. ATTACHMENTS TO THE LEASE: The Resident certifies that he/she has received a copy of this Lease and the following Attachments to this Lease, and understands that these Attachments are part of this Lease.

Attachments:

Signatures
RESIDENT:

1) Katiana Bacon

4-18-16

LANDLORD:

[Signature]

4/18/16

2) _____

Date

Received page 4 of 4

K13

Initial



HOUSING AUTHORITY OF THE CITY OF CHARLESTON

550 MEETING STREET, CHARLESTON, SOUTH CAROLINA 29403
TELEPHONE (843) 720-3970 FAX # (843) 720-3977 TDD (843) 720-3685

Donald J. Cameron, NAHRO Fellow, President & CEO

January 29, 2016

Marlin C. Burwell, Property Manager
183 President Street
Charleston, SC 29403

Katrina Brown
2214-A Sunnyside Drive
Charleston, SC 29403

2011, 2013, 2014
HUMAN SERVICE AWARD
CCHRCO

2009, 2010, 2012
NATIONAL AWARD OF MERIT
NATIONAL ASSOCIATION OF HOUSING
AND REDEVELOPMENT OFFICIALS

2000
HOUSING ACHIEVEMENT AWARD
S.C. STATE HOUSING FINANCE
AND DEVELOPMENT AUTHORITY

1991-98
CERTIFICATE OF EXCELLENCE
IN MANAGEMENT OPERATIONS
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

1997, 2014
FOUNDERS AWARD
HISTORIC CHARLESTON FOUNDATION

1994, 1999
SUSTAINED PERFORMANCE AWARD
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

1989, 1990, 1997
CAROLOPOLIS AWARD
PRESERVATION SOCIETY
OF CHARLESTON

1991
SPECIFIC ACTIVITY AWARD
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

1986, 1991
HONOR AWARD
AMERICAN INSTITUTE OF ARCHITECTS

1985
AWARD FOR
DESIGN EXCELLENCE
PRESIDENT RONALD REAGAN

1984
FEDERAL DESIGN
ACHIEVEMENT AWARD
NATIONAL ENDOWMENT
FOR THE ARTS

SUBJECT: OFFICIAL 30-DAY NOTICE OF TERMINATION FOR VIOLATION OF LEASE - VIOLENT CRIMINAL/DRUG-RELATED ACTIVITY

Dear Ms. Katrina Brown:

The purpose of this letter is to notify you that as of January 29, 2016 you are in violation of Section(s) 5(c), 5(d), 5(e), 5(f), 16(n) and 16(u) within your lease agreement. The referenced Sections are listed below.

1. 5.c-neither the resident nor any household member, guest or other persons under the resident's control shall engage in any unlawful activities
2. 5.d-neither the resident nor any household member, guest or other persons under the resident's control shall act in any manner that will disturb the rights or comfort of neighbors
3. 5.e-neither the resident nor any household member, guest or other persons under the resident's control shall engage in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other resident's or Authority employees
4. 5.f-neither the resident nor any household member, guest or other persons under the resident's control shall engage in any violent or drug related activity on or off the premises
5. 16.n-any violent or drug related criminal activity performed by any household member, guest or other persons under the resident's control on or off the premises, not just on or near the premises
6. 16.u-any other good cause.

Celebrating 80 Years of Service

Organized May 3, 1935



♻ Recycled Paper

ROA - 102

PLAINTIFF'S
EXHIBIT

NO. 2

CIVIL DISPOSITION SHEET

F.D. 3/31/16

JUDGE JENNIFER B. MCCOY

CASE NUMBER: 2016CV1010700386

3/16/2016 @ 10:30 am

DATE FILED: 3/1/16

* Decision 2 weeks from today.

PLAINTIFF: HOUSING VS KATRINA BROWN

TYPE OF CASE: RTSC

DATE OF SERVICE:

DISPOSITION DATE:

1. Default Plaintiff/ Default Defendant
2. Settled in court/Settled out of Court
3. Find for the Plaintiff
4. Find for the Defendant
5. Judicial Dismissal or Other
6. Transfer to other Court

w/leave for housing
to remove Cobb
as household member.

Clerks Comments:

Magistrates Comments:

Present:

Wright -
Burwell -
Brown -

Billingsley - Attorney for A Brown

T: son involved in A/R

Det. Jason Jarrell: CPD - 81/2

Investigations/Robbery unit →

her son crushed JAN B - unl. c.g.

JAN: 11th → att. A/R.

post-miranda 7 no confession

JAN 11th - I cool blew

vic. exited - on phone - 2 BM
approached - phone/wallet

27-40 { 720 →
if right to bond { 710 →
→ 1 day →

310 } illegal activities
540 }

4th circuit

not 1st incident

involving Mrs. Brown

1 suspects racked gun → → 3rd →
→ continued to ignore

2 days later → stopped for work
interviewed post incident
video/audio →

confessed

fit physical description →

Cross → did not witness events
→ Anthony Cobb

2nd interview → Δ said she'd make him
tell who 2nd person involved was

Δ gave father's
→ then suicide

⚠ Brown → allegations occurred off premises
son still in county jail
plan for Brown is mother's house

Closing - II - at one point, Δ said

24 CFR 96.4 (X)(5)(vi)(B): Termination for
criminal activity / alcohol abuse
(b) Housing req'd to consider circumstances for family

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

16-CP-10-2230

2016CV1010700386

MAGISTRATE CASE NUMBER

CITY OF CHARLESTON HOUSING
AUTHORITY

VS.

KATRINA BROWN
DEFENDANT

RETURN OF THE MAGISTRATE

FILED
2016 MAY 20 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT

Comes now, Jennifer B. McCoy, magistrate in and for Charleston County, South Carolina, and hereby provides the following Return for the appeal of the above-referenced case in Circuit Court:

1. On March 1, 2016, Plaintiff, City of Charleston Housing Authority ("Housing") filed an Application for Ejectment against Defendant Katrina Brown alleging violation of the terms or conditions of the lease.
2. Defendant was personally served with a copy of the Ejectment on March 4, 2016.
3. Defendant requested a hearing to show cause why she should not be ejected from the premises at 2214-A Sunnyside Drive, Charleston, SC 29403.
4. A hearing took place on March 16, 2016, at 10:30 a.m. The following parties appeared:
 - a. Stephen D. Wright, Director of Security for the Charleston Housing Authority
 - b. Marlin C. Burwell, with the Charleston Housing Authority
 - c. Detective Jason Jarrell, Officer with the Charleston City Police Department
 - d. Katrina Brown, Defendant
 - e. Matthew Billingsley, Attorney for Defendant
5. The City of Charleston Housing Authority most recently entered into a lease agreement ("Agreement") with Defendant Katrina Brown on December 16, 2015. This Agreement provided for Defendant to occupy 2214-A Sunnyside Drive, Charleston, SC 29403 along with three other

occupants: Rashauna Brown, Anthony Cobbs (correctly "Cobb"), and Janique Richardson. (See Agreement, Plaintiff's Exhibit 1.)

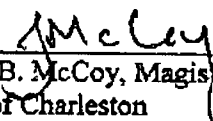
6. Plaintiffs sought ejectment of the Defendant based on Sections 5C, 5(d), 5E, 5(f), 16(n), and 16(u), which prohibit "unlawful" or "criminal" conduct by residents or household members.
7. During the hearing, the Housing Authority called Detective Jason Jarrell of the City of Charleston Police Department ("CPD") as a witness. Detective Jarrell testified that the Defendant's son, Anthony Cobb was arrested on January 13, 2016, for unlawful carrying of a pistol. Because he fit a physical description of a perpetrator of an attempted armed robbery which had taken place in the area on January 11th, two days earlier, he was questioned as to that incident as well. Neither criminal event took place on the grounds of the housing authority. According to Detective Jarrell, Mr. Cobb gave a post-Miranda confession to the attempted armed robbery after being placed under arrest for the unlawful carrying charge. However, during the first interview of Mr. Cobb, he would not "give up" the name of the second perpetrator involved in the attempted armed robbery. According to Detective Jarrell, CPD then contacted his mother, Defendant Brown, who assured the Detective she would make her son tell them the name of the second perpetrator. However, during a second interview of Mr. Cobb, he still would not give CPD a name. Detective Jarrell stated that at that point, Defendant Brown advised her son not to speak to the police anymore.
8. The Defendant, Katrina Brown, then testified that all the allegations had occurred off the premises of the Housing Authority and that her son, Mr. Cobb, was still held in the Charleston County Jail on bond for the charged offenses (at the time of the hearing). She also testified that she had no knowledge of the alleged incidents until her son was arrested. She further testified that, if he is able to post his bond, their plan is for him to stay at her mother's (his grandmother's) house and to no longer reside with her and her other young child at the Housing Authority dwelling.
9. No other witnesses testified for the Plaintiff or Defendant.
10. Upon review of the testimony presented at court, along with applicable South Carolina and United States law, the magistrate issued an Order finding that Defendant Katrina Brown was not in

substantial breach of her lease with the Housing Authority. Therefore, the magistrate did not find for an eviction against Ms. Brown. The magistrate's order did state, however, that any actions within the policies of the Housing Authority to require removal of her son, Mr. Cobb, from the lease as a household member, would be appropriate. (See magistrate's Order, dated March 31st, 2016.)

As always, this magistrate is happy to assist the circuit court with any further information as may be needed.

This the 19th day of May, 2016.

Respectfully submitted,



Jennifer B. McCoy, Magistrate Judge
County of Charleston

2017-CP-10-2711

STATE OF SOUTH CAROLINA

2016 CP-10-02230
COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2016CV1010700386
MAGISTRATE CASE NUMBER

CITY OF CHARLESTON HOUSING
AUTHORITY

SECOND RETURN OF THE MAGISTRATE

VS

KATRINA BROWN
DEFENDANT

FILED
2017 JUL 31 PM 2:06
JULIE J. ARMSTRONG
CLERK OF COURT

Comes now, Jennifer B. McCoy, magistrate in and for Charleston County, South Carolina, and hereby provides the following Return for the appeal of the above-referenced case in Circuit Court.

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 - d. Katrina Brown, Defendant
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contacted his mother, Defendant Brown, who assured the Detective she would make her son tell them the name of the second perpetrator. However, during a second interview of Mr. Cobb, he still would not give CPD a name. Detective Jarrell stated that at that point, Defendant Brown advised her son not to speak to the police anymore.

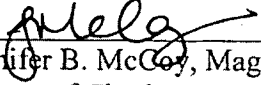
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11. On April 29, 2016, the Housing Authority appealed this ruling with the Charleston County Court of Common Pleas.

12. On January 11, 2017, the Honorable Robin Stilwell, Circuit Court Judge, issued an Order remanding the case back to Magistrate's Court for a ruling consistent with the Supreme Court's decision in *Department of Housing and Urban Development v. Rucker*, 122 S. Ct. 1230 (2002), finding the present case did not present facts substantively dissimilar from those in *Rucker*.
13. On January 30, 2017, this court then issued an Order on Remand consistent with Judge Stilwell's findings and granted an eviction.
14. On February 8, Attorneys on behalf of Ms. Brown requested the magistrate accept arguments via briefs before issuing a final ruling. This magistrate agreed and ordered the parties to file their briefs no later than February 24, 2017.
15. On February 17, 2017, notice was received by this court that counsel for Katrina Brown had filed an appeal from Judge Stilwell's Order with the South Carolina Court of Appeals.
16. On March 31, 2017, the Court of Appeals issued an Order stating that the Circuit Court Order was not immediately appealable, therefore the appeal was dismissed.
17. On April 7, 2017, this Court then issued a Second Amended Order requesting briefs on the issue by April 21, 2017.
18. On May 15, 2017, this court issued a Final Order on Remand upholding Judge Stilwell's conclusions and finding for an eviction.
19. On May 31, 2017, counsel for Katrina Brown filed another appeal of this order to the Charleston County Court of Common Pleas.

As always, this magistrate is happy to assist the circuit court with any further information as may be needed.

This the 28 day of July, 2017.

Respectfully submitted,



Jennifer B. McCoy, Magistrate Judge
County of Charleston

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2018-002155

The Housing Authority of the City of Charleston

Respondent

v.

Katrina Brown

Appellant

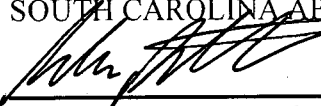
RECEIVED
MAY 31 2019
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 28, 2019

SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER


By: Adam Protheroe, S.C. Bar No. 78442
P.O. Box 7187
Columbia, SC 29202
(803) 779-1113 ext. 106

SOUTH CAROLINA LEGAL SERVICES
Matthew M. Billingsley, S.C. Bar No. 76095
2803 Carner Avenue
Charleston, SC 29405
(843) 266-2174

Attorneys for Appellant