

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Special Circuit Court Judge

Civil Action No. 2016-CP-07-1475
Appellate Case No. 2017-0001761

SHAMSY MADANI.....Respondent,

v.

RICKEY PHELPS AND CHRISTY PHELPS.....Appellants.

SUPPLEMENTAL RECORD ON APPEAL

Andrew J. Toney, SC Bar # 73037
Mullen Wylie, LLC
PO Box 5969
Hilton Head Island, SC 29938
(843)785-6969
Attorney for Respondent

Chris S. Truluck, SC Bar # 77829
1720 Main St., Ste 104
Columbia, SC 29201
(803) 556-7285
Attorney for Appellants

RECEIVED
MAR 29 2018
SC Court of Appeals

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

2015CV0710301177
CIVIL CASE NUMBER

COUNTY OF BEAUFORT

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Sherry Madani
Carter Circle
Bluffton, SC 29909
843-365-2656

cell 843-365-7635

11-24-15
0930
Eject

PLAINTIFF(S)

Rickey Phelps And Others
100 Kensington Blvd #219
Bluffton, SC 29910

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

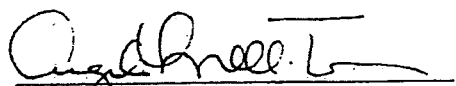
Upon Judgment of this Court, rendered on the 12th day of November, 2015, you are hereby Ordered to proceed to the premises located at 100 Kensington Blvd #219 Bluffton, SC 29910.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have twenty four (24) hours to voluntarily vacate the premises. If the premises appear unoccupied and no one responds to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, a deputy sheriff may enter the premises using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

November 13, 2015


Bluffton Magistrate

Col. Tamm 221, being duly sworn state that:

- ☐ I personally served a copy of this Writ on _____, an occupant of the rental unit.
- ☒ On 11-23-2015 at 0917 the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise. On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- ☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- ☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- ☐ Informed by Plaintiff that case is settled.

Date: _____ 20____

Sheriff/Deputy Sheriff/Constable

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

Shamsy Madani,)
Defendant)

Where Rickey Phelps and Christy Phelps (Plaintiffs) assert Shamsy Madani (Defendant) failed to return to the Plaintiffs the security deposit in compliance with SC Code 27-7-410;

☒ We the Jury unanimously find for;

☒ Plaintiffs where they have proven their claim by a preponderance of the evidence and further find the amount withheld in the amount of \$ 950.00.

Defendant where the Plaintiffs have failed to prove their claim by a preponderance of the evidence.

JURORS:

Ernie L. Campbell
William T. Hill
William T. Hill
William T. Hill

Foreman

DATE

4-18-2016

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

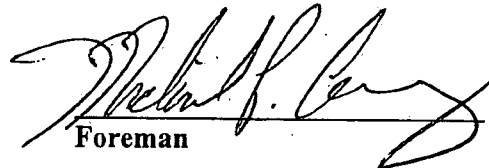
Shamsy Madani,)
Defendant)

Where Christy Phelps (Plaintiff) asserts Shamsy Madani (Defendant) unlawfully excluded her from the premises.

☒ We the Jury unanimously find for;

☒ Plaintiff where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$0

☐ Defendant where the Plaintiff has failed to prove her claim by a preponderance of the evidence.


Foreman

JURORS:

Corrie R Campbell
Matthew West
Bonnie Francis
William Hodge

DATE

4/18/2016

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

Shamsy Madani,)
Defendant)

Where Rickey Phelps (Plaintiff) asserts Shamsy Madani (Defendant) unlawfully excluded him from the premises.

☒ We the Jury unanimously find for;

☒ Plaintiff where he has proven his claim by a preponderance of the evidence and further find actual damages in the amount of \$0.

Defendant where the Plaintiff has failed to prove his claim by a preponderance of the evidence.

Michael H. Long
Foreman

JURORS:

Cornie L. Campbell
Shirley L. Long
William H. Long
William H. Long
William H. Long

DATE

4/18/2016

MAGISTRATE

STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT }

2015CV0710301411^o
CASE NUMBER

Rickey Phelps and Christy Phelps,)
Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

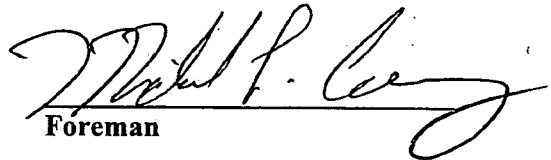
Shamsy Madani,)
Defendant)

Where Shamsy Madami (Defendant) asserts Rickey Phelps and Christy Phelps (Plaintiffs) caused damage to the subject rental property;

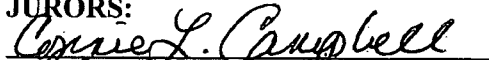
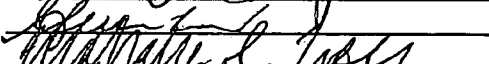
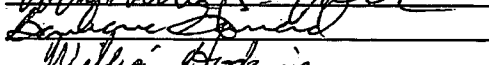
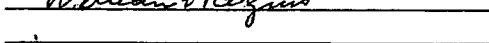
☒ We the Jury unanimously find for;

☒ Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$301.85

_____ Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.


Foreman

JURORS:

4/18/2016

DATE

MAGISTRATE

STATE OF SOUTH CAROLINA }
 COUNTY OF BEAUFORT }

2015CV0710301411
 CASE NUMBER

Rickey Phelps and Christy Phelps,)
 Plaintiffs)

IN THE SUMMARY COURT

JURY VERDICT

vs.)

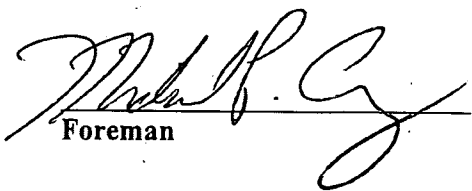
Shamsy Madani,)
 Defendant)

Where Shamsy Madami (Defendant) asserts Rickey Phelps and Christy Phelps (Plaintiffs) failed to pay rent;

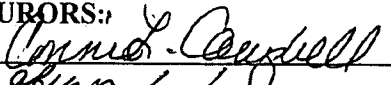
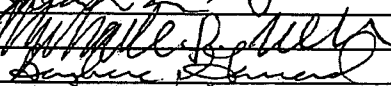
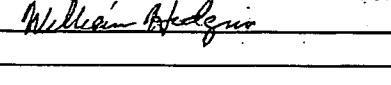
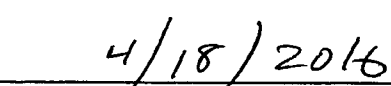
☒ We the Jury unanimously find for;

☒ Defendant where she has proven her claim by a preponderance of the evidence and further find actual damages in the amount of \$1,050.

Plaintiffs where the Defendant has failed to prove her claim by a preponderance of the evidence.


 Foreman

JURORS:

DATE

4/18/2016

MAGISTRATE

STATE OF SOUTH CAROLINA) IN THE MAGISTRATE'S COURT
COUNTY OF BEAUFORT) C/A NO: 2015CV0710301411

RICKY PHELPS AND CHRISTY PHELPS,)
Plaintiffs,)

Vs.)

SHAMSY MADANI,)
Defendant.)

Order on Post Trial Motions of Defendant

BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 JUN -6 AM 8:23

This Order resolves Defendant Shamsy Madani's Motion for Reconsideration and New Trial which was filed with the Beaufort County Magistrate Court on May 20, 2016. The Motions apply to the Court's Order on Post Trial Motions of the parties filed April 28, 2016, and the Court's Order on post trial motions of the parties signed on May 12, 2016. The Plaintiffs Phelps object to the Court's consideration of the motion as untimely filed; however, the Court has considered the motion in full.

1. Defendant Madani first moves that the Court award her attorney's fees on the basis that she was the prevailing party in her counterclaim against the Plaintiff. In this matter, both parties were given awards by the jury. Because of the statutory provision requiring the award of three months' rent or the amount awarded by the jury, whichever is greater, on the Plaintiff's claim of unlawful ouster, the Plaintiffs' monetary award exceeded the award made to the Defendant on her claim for unpaid rent. Therefore, the Court found that the Plaintiffs were the prevailing party in the matter and were entitled to an award of attorneys fees. The Defendant's claim for attorney's fees is therefore denied. It is unclear whether the Defendant wishes to cross examine the Plaintiff's attorney regarding his fees or present evidence in that regard. Should he wish to do so, a hearing to reconsider the *amount* of the attorneys fees awarded to the Plaintiffs will be scheduled upon request.
2. Defendant alleges that Plaintiffs' Rule 59 motion was not timely filed. I find that it was timely filed.
3. Defendant Madani further argues that a new trial must be granted because the jury's verdict of zero dollars is irreconcilable as a matter of law. The Plaintiffs sued the Defendant for a violation of S.C. Code Sections 27-40-660 (unlawful ouster) and 27-40-410 (failure to observe the statutory requirement for deductions from return of the security deposit at the end of a lease). The Defendant counterclaimed against the Defendant for failure to pay rent and for damages to her property. At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded \$0 (Zero dollars) in damages. They also found the Plaintiffs were entitled to the

sum of \$950.00 (Nine hundred fifty dollars) for a violation of the statutory requirements for the return of security deposits. The jury further found that, as to the Defendant's counterclaim, the Defendant was entitled to \$1050 in unpaid rent and \$301.85 for damages to the property. Had there been no statutory right to changes in the verdict, the Defendant would have "netted" Four hundred one dollars and 75/100 (\$401.75) and this was clearly the intention of the jury based upon its verdicts. The South Carolina Code, however, states, "If a landlord unlawfully removes or excludes the tenant from the premises, or willfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord shall return security recoverable under § 27-40-410." In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

4. Defendant Madani argues that the Plaintiffs case is barred by res judicata and collateral estoppel because the parties were previously engaged in an eviction proceeding in which the Defendant sought an order of eviction against the Plaintiffs. She argues that any claims by the Plaintiffs should have been brought in that proceeding. These issues were not raised at trial and cannot be raised now. In any case, I find that the Plaintiffs actions were not mandatory counterclaims in the eviction proceeding.

The Defendant also argues that collateral estoppels precludes the Plaintiffs' claim for a violation of the security deposit statute in that the jury found that there was unpaid rent due to the Defendant and at the same time found that the Defendant violated the provisions of the security deposit statute. Because the language of the statute requires certain conduct on the part of the landlord before any deduction in the security deposit can be made, I find that the verdict is not inconsistent.

5. Defendant Madani requests that the Court reconsider her request for attorney's fees. While the Court did review and consider the affidavit for attorney's fees filed by the Defendant Madani, the finding that the Plaintiffs are the prevailing party in this matter precludes the award of attorney's fees to the Defendant.
6. All dates of judgment remain the dates that the orders were signed and filed.
7. The Defendant moves that the court order a New Trial *Nisi Additur* on the grounds that the judgment by the jury on the amount owed to the Defendant Madani was inadequate as a matter of law. The jury was instructed on the law and the defenses to nonpayment of rent. The amount of rent owed to the Defendant was a question for the jury to decide.

Defendant's motions are therefore denied.

IT IS SO ORDERED.

Beaufort, South Carolina
June 1, 2016


Nancy Sadler, Beaufort County Magistrate

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT

COMPLAINT

(JURY TRIAL REQUESTED)

C/A NO: 2015CV-

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.

2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.

3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.

4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth.

UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660

5. The above stated allegations are hereby incorporated as if stated herein.

6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.

7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.

8. The monthly rent due pursuant to the terms of the Lease is \$950.00.

9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

10. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with

conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.

11. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.

12. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
171 Church Street, Suite 330
Charleston, SC 29401
(843) 425-9359

Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

Charleston, South Carolina
November ____, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiffs,

vs.

Shamsy Madani,

Defendant.

IN THE MAGISTRATE'S COURT

C.A. No. 2015-CV-0710301411

ANSWER TO COMPLAINT AND
COUNTERCLAIMBEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 JAN 12 AM 8:56

NOW COMES the defendant, Shamsy Madani (hereinafter "Madani"), specifically reserving all of her rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiffs' Complaint, and Counterclaim against plaintiffs, would respectfully show unto the Court that:

1. Any allegation not hereinafter specifically admitted is denied.
2. Paragraphs 1 through 4 of the Complaint are admitted.
3. As to paragraph 5 of the Complaint, Madani incorporates herein by reference paragraphs 1 and 2 above.
4. Paragraphs 6 through 8 of the Complaint are admitted.
5. Madani admits so much of paragraph 9 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.
6. Madani denies paragraphs 10 through 12 of the Complaint.

FOR A FIRST DEFENSE

7. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SECOND DEFENSE

8. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

FOR AN THIRD DEFENSE

9. Defendant reserves any and all further defenses as may be revealed and ascertained by additional information during the course of discovery and investigation, and as in conformity and compliance with the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF A COUNTERCLAIM
AS TO RICKEY PHELPS AND CHRISTY PHELPS**

10. This matter involves Rickey Phelps and Christy Phelps (hereinafter "Phelps") breach of their lease agreement with Madani and related damage caused by Phelps to Madani's property.

FACTUAL ALLEGATIONS

11. Madani, as landlord, did enter into a lease agreement with Phelps, as tenants, for the rental of 100 Kensington Blvd., #219, Bluffton, SC 29910 ("Subject Property").
12. The lease of the Subject Property did commence on March 20, 2015 and terminate on March 1, 2016.
13. Several months prior to the expiration of the lease, Phelps ceased paying required rent, pursuant to the terms of the lease, to Madani.
14. Madani felt concern for Phelps' circumstances and attempted to assist Phelps during their time of hardship.
15. Several furniture rental companies had rented furniture to Phelps.
16. Such furniture companies claimed to Madani that Phelps had failed to pay for rental furniture, and such companies claimed they needed access to the Subject Property to collect their furniture.

17. Madani refused to allow such furniture companies' access to the Subject Property.
18. Madani attempted to schedule several meetings with Phelps.
19. Each time Madani went to the Subject Property to meet with Phelps, Phelps was not at the Subject Property.
20. On one visit to the Subject Property, Madani noticed that the Subject Property's door had been damaged and the door lock appeared to have been manipulated by someone with tools.
21. Madani questioned neighbors of the Subject Property about the Phelps.
22. The Phelps' neighbors notified Madani that unknown persons had been attempting to enter the Subject Property.
23. Madani notified Phelps that the locks of the Subject Property needed to be repaired and changed because it was obvious someone was trying to break-in or enter the Subject Property unlawfully.
24. Madani notified Phelps on October 2, 2015 that she was going to change and repair the locks of the Subject Property and that she would have keys for Phelps.
25. During the evening of Friday, October 2, 2015, Phelps informed Madani that he would not meet to retrieve the new keys or come to Madani to retrieve the new keys.
26. Phelps informed Madani on Friday, October 2, 2015 that he did not want or need the new keys until Monday, October 5, 2015.
27. Phelps scheduled a time to meet Madani on Monday, October 5, 2015 to receive a set of keys to the new lock for the Subject Property.
28. Phelps, once again, did not show up for the scheduled meeting with Madani to retrieve the keys to the new locks to the Subject Property.

29. Madani informed Phelps that she would leave the new keys with the front office of the apartment complex wherein the Subject Property is located.

30. Phelps failed to retrieve the new keys from the office of the apartment complex at the time when Mr. Phelps said he would retrieve them.

31. Madani did lawfully evict Phelps for failure to pay rent.

32. Phelps did fail to pay several months rent to Madani and damaged the Subject Property.

33. Despite Madani's good faith efforts to help and assist Phelps, Phelps filed the subject lawsuit.

34. As a direct and proximate result of Phelps' actions described above, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rent, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Lease – As to Phelps)

35. Each and every allegation set forth above is fully incorporated herein.

36. Phelps contracted to lease the Subject Property from Madani in accordance with the terms and conditions of the lease agreement, incorporated herein by reference.

37. Phelps breached their obligations contained within the lease agreement by their failure to pay due and owing rents, by damaging the subject property, and by other particulars to wit.

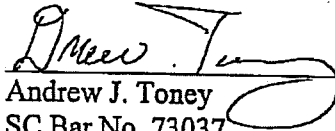
38. As a direct and proximate result, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rents,

reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

WHEREFORE, Madani prays this Court dismiss Plaintiffs' Complaint and grant Madani the relief prayed for in the Answer and Counterclaim.

Respectfully Submitted,

MULLEN WYLIE, LLC

A handwritten signature in black ink, appearing to read "Andrew J. Toney", is written over a horizontal line.

Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

January 6, 2015
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Rickey Phelps and Christy Phelps,)

Plaintiffs,)

vs.)

Shamsy Madani,)

Defendant.)

IN THE MAGISTRATE'S COURT

C.A. No. 2015-CV-0710301411

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Defendant's Answer to Complaint and Counterclaim in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Chris S. Truluck, Esquire
 171 Church Street, #330
 Charleston, SC 29401

Peggy Medaglia
 Peggy Medaglia

January 7, 2016
 Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT
AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.
2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.
4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth pursuant to South Carolina Code § 22-3-10 and venue is proper pursuant to South Carolina Code § 15-7-30.

**NONCOMPLIANCE BY LANDLORD IN GENERAL PURSUANT TO S.C. CODE
§ 27-40-610**

5. The above stated allegations are hereby incorporated as if stated herein.
6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
8. The monthly rent due pursuant to the terms of the Lease is \$950.00.
9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

10. On or before September, 2015, Defendant unlawfully and willfully required Plaintiff to provide payments for rent in violation of South Carolina Code § 27-40-310.

11. On or about the months of September and October Defendant unlawfully and willfully entered Plaintiff's residence in violation of South Carolina Code § 27-40-530.

12. Plaintiff has suffered actual damages as a result of Defendant's general non-compliance of South Carolina Code § 27-40-610.

13. Pursuant to South Carolina Code section 27-40-610, Plaintiff is entitled to recover actual damages in addition to reasonable attorney's fees where the conduct of Defendant was willful.

14. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660

15. The above stated allegations are hereby incorporated as if stated herein.

16. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.

17. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.

18. The monthly rent due pursuant to the terms of the Lease is \$950.00.

19. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

20. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.

21. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.

22. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.

23. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285

Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

Columbia, South Carolina
January 22, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT

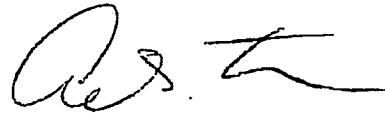
CERTIFICATE OF SERVICE

C/A NO: 2015CV0710301411

The undersigned states that on January 22, 2016, he caused a true and correct copy of Defendant's Amended Complaint to be served upon the party identified below by United States mail, proper postage affixed and addressed as follows:

Andrew J. Toney
Post Office Box 5696
Hilton Head Island, SC 29938
Attorney for Defendant

TRULUCK LAW FIRM, LLC



Chris S. Truluck, (S.C. Bar 77829)
1720 Main Street, Suite 104
Columbia, SC 29201
Tel: (803) 556-7285
Facsimile: (843) 620-0502
ctruluck@trulucklawfirm.com
Attorney for Defendant

Columbia, South Carolina
Dated: January 22, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiffs,

vs.

Shamsy Madani,

Defendant.

IN THE MAGISTRATE'S COURT

C.A. No. 2015-CV-0710301411

ANSWER TO AMENDED COMPLAINT
AND COUNTERCLAIM

2016 FEB 29 PM 1:17

BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH

NOW COMES the defendant, Shamsy Madani (hereinafter "Madani"), specifically reserving all of her rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiffs' Amended Complaint, and Counterclaim against plaintiffs, would respectfully show unto the Court that:

1. Any allegation not hereinafter specifically admitted is denied.
2. Paragraphs 1 through 4 of the Complaint are admitted.
3. As to paragraph 5 of the Complaint, Madani incorporates herein by reference paragraphs 1 and 2 above.
4. Paragraphs 6 through 8 of the Complaint are admitted.
5. Madani admits so much of paragraph 9 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.
6. Madani denies paragraphs 10 through 14 of the Complaint.
7. As to paragraph 15 of the Complaint, Madani incorporates herein by reference paragraphs 1 through 6 above.
8. Paragraphs 16 through 18 of the Complaint are admitted.

9. Madani admits so much of paragraph 19 of the Complaint that alleges the Lease intended the Property to be used as Plaintiffs' residence. The rest and remainder of paragraph 9 of the Complaint is denied.

10. Madani denies paragraphs 20 through 23 of the Complaint.

FOR A FIRST DEFENSE

11. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SECOND DEFENSE

12. Plaintiffs' claims are barred, in whole or in part, by the doctrine of estoppel.

FOR A THIRD DEFENSE

13. Plaintiffs' claims are barred, in whole or in part, by the doctrine of res judicata.

FOR AN FOURTH DEFENSE

14. Defendant reserves any and all further defenses as may be revealed and ascertained by additional information during the course of discovery and investigation, and as in conformity and compliance with the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING THE COMPLAINT AND BY WAY OF A COUNTERCLAIM
AS TO RICKEY PHELPS AND CHRISTY PHELPS**

15. This matter involves Rickey Phelps and Christy Phelps (hereinafter 'Phelps') breach of their lease agreement with Madani and related damage caused by Phelps to Madani's property.

FACTUAL ALLEGATIONS

16. Madani, as landlord, did enter into a lease agreement with Phelps, as tenants, for the rental of 100 Kensington Blvd., #219, Bluffton, SC 29910 ('Subject Property').

17. The lease of the Subject Property did commence on March 20, 2015 and terminate on March 1, 2016.

18. Several months prior to the expiration of the lease, Phelps ceased paying required rent, pursuant to the terms of the lease, to Madani.
19. Madani felt concern for Phelps' circumstances and attempted to assist Phelps during their time of hardship.
20. Several furniture rental companies had rented furniture to Phelps.
21. Such furniture companies claimed to Madani that Phelps had failed to pay for rental furniture, and such companies claimed they needed access to the Subject Property to collect their furniture.
22. Madani refused to allow such furniture companies' access to the Subject Property.
23. Madani attempted to schedule several meetings with Phelps.
24. Each time Madani went to the Subject Property to meet with Phelps, Phelps was not at the Subject Property.
25. On one visit to the Subject Property, Madani noticed that the Subject Property's door had been damaged and the door lock appeared to have been manipulated by someone with tools.
26. Madani questioned neighbors of the Subject Property about the Phelps.
27. The Phelps' neighbors notified Madani that unknown persons had been attempting to enter the Subject Property.
28. Madani notified Phelps that the locks of the Subject Property needed to be repaired and changed because it was obvious someone was trying to break-in or enter the Subject Property unlawfully.
29. Madani notified Phelps on October 2, 2015 that she was going to change and repair the locks of the Subject Property and that she would have keys for Phelps.

30. During the evening of Friday, October 2, 2015, Phelps informed Madani that he would not meet to retrieve the new keys or come to Madani to retrieve the new keys.

31. Phelps informed Madani on Friday, October 2, 2015 that he did not want or need the new keys until Monday, October 5, 2015.

32. Phelps scheduled a time to meet Madani on Monday, October 5, 2015 to receive a set of keys to the new lock for the Subject Property.

33. Phelps, once again, did not show up for the scheduled meeting with Madani to retrieve the keys to the new locks to the Subject Property.

34. Madani informed Phelps that she would leave the new keys with the front office of the apartment complex wherein the Subject Property is located.

35. Phelps failed to retrieve the new keys from the office of the apartment complex at the time when Mr. Phelps said he would retrieve them.

36. Madani did lawfully evict Phelps for failure to pay rent and Phelps does now owe Madani unpaid rent.

37. Phelps did fail to pay several months rent to Madani and damaged the Subject Property.

38. Despite Madani's good faith efforts to help and assist Phelps, Phelps filed the subject lawsuit.

39. As a direct and proximate result of Phelps' actions described above, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rent, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

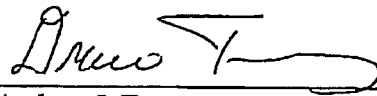
FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Lease—As to Phelps)

40. Each and every allegation set forth above is fully incorporated herein.
41. Phelps contracted to lease the Subject Property from Madani in accordance with the terms and conditions of the lease agreement, incorporated herein by reference.
42. Phelps breached their obligations contained within the lease agreement by their failure to pay due and owing rents, by damaging the subject property, and by other particulars to wit.
43. As a direct and proximate result, Madani has suffered injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, unpaid rents, reasonable attorney's fees, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and prejudgment and post judgment interest.

WHEREFORE, Madani prays this Court dismiss Plaintiffs' Complaint and grant Madani the relief prayed for in the Answer and Counterclaim.

Respectfully Submitted,

MULLEN WYLIE, LLC



Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

February 25, 2016
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT)

COUNTY OF BEAUFORT)

C.A. No. 2015-CV-0710301411)

Rickey Phelps and Christy Phelps,)

Plaintiffs,)

CERTIFICATE OF SERVICE)

vs.)

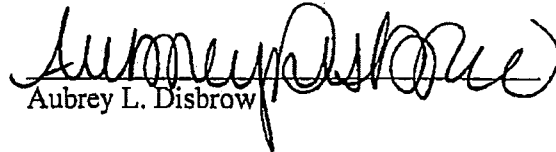
Shamsy Madani,)

Defendant.)

The undersigned certifies that a copy of Defendant's Answer to Amended Complaint and Counterclaim in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Attorney for the Plaintiffs

Chris S. Truluck, Esquire
1720 Main Street, Suite 104
Columbia, SC 29201



Aubrey L. Disbrow

February 25, 2016
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT
SECOND AMENDED SUMMONS

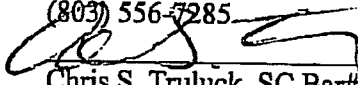
(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1720 Main Street, Suite 104, Columbia, SC 29201, within thirty (30) days after service hereof and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285


Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff(s)

Charleston, South Carolina
February 26, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiff(s),

vs.

Shamsy Madani,

Defendant(s).

IN THE MAGISTRATE'S COURT
SECOND AMENDED COMPLAINT
(JURY TRIAL REQUESTED)

C/A NO: 2015CV0710301411

The Plaintiff, complaining of the Defendant above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiffs, Rickey Phelps and Christy Phelps ("Plaintiffs"), are residents of the County of Beaufort, State of South Carolina.
2. That the Defendant, Shamsy Madani ("Defendant") is, upon information and belief, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That the residential property hereinafter described, which is the subject of this action, is located in the County of Beaufort, State of South Carolina.
4. That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth pursuant to South Carolina Code § 22-3-10 and venue is proper pursuant to South Carolina Code § 15-7-30.

**NONCOMPLIANCE BY LANDLORD IN GENERAL PURSUANT TO S.C. CODE
§ 27-40-610**

5. The above stated allegations are hereby incorporated as if stated herein.
6. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
7. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.
8. The monthly rent due pursuant to the terms of the Lease is \$950.00.
9. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

10. On or before September, 2015, Defendant unlawfully and willfully required Plaintiff to provide payments for rent in violation of South Carolina Code § 27-40-310.

11. On or about the months of September and October Defendant unlawfully and willfully entered Plaintiff's residence in violation of South Carolina Code § 27-40-530.

12. Plaintiff has suffered actual damages as a result of Defendant's general non-compliance of South Carolina Code § 27-40-610.

13. Pursuant to South Carolina Code section 27-40-610, Plaintiff is entitled to recover actual damages in addition to reasonable attorney's fees where the conduct of Defendant was willful.

14. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

UNLAWFUL OUSTER PURSUANT TO S.C. CODE § 27-40-660

15. The above stated allegations are hereby incorporated as if stated herein.

16. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.

17. The Lease commenced on March 20, 2015 and terminates on March 1, 2016.

18. The monthly rent due pursuant to the terms of the Lease is \$950.00.

19. The Lease intended the Property to be used as Plaintiff's residence and was so occupied.

20. On or about October 6, 2015, Defendant unlawfully changed the locks to the Property and contemporaneously noticed ("Notice") the Plaintiffs of the change in locks with conditional access. A copy of the Notice is hereby incorporated by reference and attached as Exhibit A.

21. Plaintiffs' were unlawfully ousted and denied access to the Property as a result of the change in the locks on or about October 6, 2015 until on or about October 14, 2015.

22. Pursuant to South Carolina Code section 27-40-660, Plaintiff is entitled to recover statutory damages in the amount \$2,850.00 and reasonable attorney's fees.

23. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

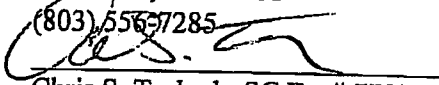
FAILURE TO RETURN SECURITY DEPOSIT PURSUANT TO S.C. CODE § 27-40-410

24. The above stated allegations are hereby incorporated as if stated herein.
25. Plaintiffs entered into a lease agreement ("Lease") with Defendant regarding residential property located at 100 Kensington Blvd #219, Bluffton, SC 29910 ("Property") on or about March 20, 2015.
26. Plaintiff's deposited with Defendant a security deposit in the amount of \$950.00 pursuant to the terms of the lease.
27. Plaintiff delivered possession of the property on or about November 21, 2015.
28. On or about January 19, 2015 Plaintiffs provided written notice to Defendant pursuant to § 27-40-410 requesting the return of Plaintiffs' security deposit to P.O. Box 962691, Riverdale, GA 30296.
29. Defendant has failed to return Plaintiff's security deposit or otherwise provide written itemization of deductions of any amounts by Defendant.
30. Pursuant to South Carolina Code section 27-40-410, Plaintiff is entitled to recover three times the security deposit in addition to reasonable attorney's fees.
31. Plaintiff is further entitled to an award of punitive damages where Defendant's conduct was willful and motivated by a reckless indifference to the rights of Plaintiff.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters set forth and that:

1. The amount due Plaintiff be ascertained and determined under the direction of this Court and upon verdict of a Jury.
2. An Order be entered against Defendant for the amount due as ascertained and determined under the direction of this Court.
3. A determination be made of the reasonable attorney's to be awarded and an Order be entered against Defendant for the amount due as ascertained under direction of this Court.
4. An Order be entered for such other and further relief as may be just and proper.

Truluck Law Firm, LLC
 1720 Main Street, Suite 104
 Columbia, SC 29201
 (803) 556-7285


 Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

Columbia, South Carolina
 February 26, 2016

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF BEAUFORT	)	C.A. No. 2015-CV-0710301411
	)	
Rickey Phelps and Christy Phelps,	)	SHAMSY MADANI'S NOTICE OF MOTION
	)	MOTION, AND MEMORANDUM IN SUPPORT
Plaintiffs,	)	OF MOTION FOR NISI ADDITUR, NEW TRIAL
	)	ABSOLUTE, JUDGMENT NOTWITHSTANDING
vs.	)	THE VERDICT, ATTORNEYS FEES AND
	)	COSTS AND IN OPPOSITION TO PLAINTIFFS'
Shamsy Madani,	)	DEMAND FOR JUDGMENT
	)	
Defendant.	)	

BEAUFORT COUNTY SOUTH CAROLINA
 MAGISTRATE COURT
 2016 APR 22 PM 2:14

TO: THE HONORABLE NANCY D. SADLER

BACKGROUND

The jury trial of this case occurred on Monday, April 18, 2016. The facts and procedural history that are relevant are as follows:

1. Beginning on March 20, 2015, plaintiffs rented an apartment from Shamsy Madani (hereinafter "Madani") for \$950/month, plaintiffs paid a \$950 security deposit, and the lease agreement expired on March 1, 2016;
2. Plaintiffs failed to pay rent for the months of September, October, and November 2015;
3. On October 2, 2015, Ms. Madani changed the locks of plaintiffs' apartment door and placed notice upon plaintiffs' door of the changed lock and informed the plaintiffs to contact her for the new key;
4. Plaintiffs called Ms. Madani when they saw the notice, approximately one week after notice was posted, regarding the key and testified that they were locked out of the apartment for either one week or two weeks, but did not testify as to where they stayed or as to any damages incurred;

5. By Order of the Bluffton Magistrate, plaintiffs were evicted from the apartment on November 13, 2015, and plaintiffs claim they left the apartment on or around November 21, 2015;
6. On December 1, 2015, plaintiffs filed a lawsuit against Madani, alleging unlawful ouster as their only cause of action;
7. On January 11, 2016, Madani answered plaintiffs' complaint and counterclaimed for breach of lease for plaintiffs' failure to pay several months rent and damaging the apartment;
8. Ms. Madani placed plaintiffs on notice that she claimed damage in excess of plaintiffs' \$950 security deposit;
9. On January 16, 2016, plaintiffs sent a letter to Madani requesting return of the security deposit, which Madani did not respond to due to her counterclaim encompassing damages in excess of the \$950 security deposit;
10. On January 22, 2016, plaintiffs filed their amended complaint, adding as a cause of action allegations of Ms. Madani's general violation of the South Carolina Residential Landlord Tenant Act;
11. Ms. Madani answered the amended complaint and counterclaimed, once again, for plaintiffs' breach of lease for failure to pay rent and the damage caused to the apartment;
12. On February 26, 2016, plaintiffs, without leave of court, once again amended their complaint to add a cause of action alleging Ms. Madani failed to comply with S.C. Code §27-40-410 for failing to respond to plaintiffs request for return of their security

deposit, despite Ms. Madani having done so in her counterclaim contained in her answer to the original and amended complaints;

13. At trial, plaintiffs presented only themselves as witnesses and did not offer one piece of evidence as to any damages sustained by them as a result of Ms. Madani's alleged actions;
14. Ms. Madani testified and introduced as damages \$3,725.00 in unpaid rent and late rent charges, and \$815.38 in actual damages caused by plaintiffs use of the apartment, for a total damage claim of \$4,540.38;
15. The jury returned a verdict in favor of Madani in the amount of \$301.85 for damages caused by plaintiffs to Madani's apartment, and returned a verdict in favor of Madani for \$1,050.00 for plaintiffs' failure to pay rent, for a total verdict in favor of Madani of \$1,351.85;
16. The jury returned a verdict in favor of plaintiffs in the amount of \$950 for Ms. Madani's failure to return the security deposit, and returned a verdict in favor of plaintiffs for \$0.0 for Ms. Madani's violation of S.C. Code §27-40-660;
17. Madani's judgment exceeds that of plaintiffs by \$401.85;
18. The jury found that plaintiffs breached the lease, such lease allows for the award of attorney fees and costs to the prevailing party in the event a party files a claim to enforce the lease;
19. By the award of the jury, Madani is the prevailing party and should be awarded attorney fees and costs at the discretion of the Court.

Plaintiffs filed this lawsuit attempting to recover monies for technical violations of the South Carolina Residential Landlord and Tenant Act and failed to present one piece of evidence

as to any actual damages incurred by them. In fact, plaintiffs did not even claim any actual damages in their case. Ms. Madani counterclaimed for actual damages incurred as a result of the actions of plaintiffs, and the jury ultimately found in favor of Ms. Madani. Furthermore, because the jury found that plaintiffs had breached their lease and awarded damages to Ms. Madani for the same, by the terms of the lease, Ms. Madani is due and owing attorney fees and costs.

1. NEW TRIAL *NISI ADDITUR* MUST BE GRANTED AS TO MS. MADANI'S CLAIM FOR BREACH OF LEASE FOR FAILURE TO PAY RENT

If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial *nisi additur*. Easler v. Hejaz Temple, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985). In order to grant a moving party additur, the Court must determine that the jury award was inadequate based upon the evidence. See Bailey v. Peacock, 318 S.C. 13 (1995).

The jury in this case found that plaintiffs breached their lease for failing to pay rent. It is undisputed that the plaintiffs lived in the apartment until November 21, 2016. It is undisputed, and the plaintiffs freely admitted, that they did not pay rent for the months of September, October and November 2015. The jury in this case found that the plaintiffs breached their lease by failing to pay rent. The plaintiffs failed to pay rent for the months of September, October, and November, and failed to pay the late fees associated with each month's rent. The jury's award for breaching the lease by failing to pay rent is inadequate for the number of months that the plaintiffs failed to pay rent and rent late charges.

For these reasons, the judgment in favor of Ms. Madani for plaintiffs' failure to pay rent must be increased from \$1,050.00 to \$3,150.00, or in the alternative a new trial must be ordered pursuant to new trial *nisi additur*.

2. JUDGMENT NOTWITHSTANDING THE VERDICT MUST BE GRANTED IN FAVOR TO MS. MADANI AS TO PLAINTIFFS' CLAIM FOR VIOLATION OF THE SECURITY DEPOSIT STATUE

a. PLAINTIFFS WERE ON NOTICE AND THE SECURITY DEPOSIT CODE SECTION WAS NOT VIOLATED

SC Code §27-40-410 states in pertinent part:

"(a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with Section 27-40-510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy and delivery of possession and demand by the tenant, whichever is later. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address, the tenant is not entitled to damages under this subsection provided the landlord (1) had no notice of the tenant's whereabouts and (2) mailed the written notice and amount due, if any, to the tenant's last known address."

The South Carolina Residential Landlord and Tenant Act (hereinafter "Act" or "The Act") defines "notice" in SC Code §27-40-240. SC Code §27-4-240 states in pertinent part:

"(A) A person has notice of a fact if:

- (1) the person has actual knowledge of it;
- (2) the person has received a notice or notification of it; or
- (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

(B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

- (1) it comes to his attention; or

(2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication; or

(3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt."

Plaintiffs commenced the instant action by and through their attorney. Plaintiffs filed this action on December 1, 2015. Ms. Madani answered the plaintiffs' complaint and immediately asserted a counterclaim for plaintiffs' failure to pay several months rent and causing damage to the apartment, all in violation of the lease agreement. Plaintiffs did not notify Ms. Madani of their new address until two months after moving out of the apartment, after which time their lawsuit had been commenced and Ms. Madani had countersued them for failing to pay several months rent and causing damage to the apartment.

Pursuant to The Act's definition of "Notice," Ms. Madani gave notice or notification to plaintiffs when she answered plaintiffs' complaint and counterclaimed for plaintiffs' failing to pay rent for several months and damaging the apartment. Madani actually gave notice to the plaintiffs, through their attorney, that the plaintiffs owed Madani more than the security deposit before the plaintiffs ever attempted to comply with The Act by sending a letter to Madani requesting return of the security deposit.

Plaintiffs attempt to manipulate The Act to recover some amount of damages for violation of The Act is wholly unsupported by the South Carolina Rules of Civil Procedure and The Act itself. By Ms. Madani's very counter-lawsuit against them, plaintiffs were on notice, pursuant to the definition contained within The Act, that Ms. Madani claimed an amount in excess of the security deposited by plaintiffs.

As a matter of law, plaintiffs' claim for violation of SC Code §27-40-410 "Security Deposits" must be dismissed. Plaintiffs' claim is for a technical violation of The Act, which was not violated if the entire Act is applied to the procedural history and facts of this case. To allow plaintiffs to create another cause of action such as this once litigation has commenced by communicating directly with a represented party and then such plaintiffs, who are also represented by counsel, to claim that they are not on notice that their security deposit will not be returned creates a result contrary to the South Carolina Rules of Civil Procedure and in stark contrast to public policy and fairness.

The plaintiffs' failure to provide Ms. Madani with their forwarding address and their filing of this lawsuit resulted in restricting Ms. Madani to only communicating through her counsel and to plaintiffs' counsel. In this case the notice requirement of The Act was communicated through pleadings and Madani's demand of several months' rent and damages, which places plaintiffs on notice that Madani is claiming far more than plaintiffs' deposited security.

Plaintiffs claim is for a technical violation of The Act, which must be dismissed as a matter of law.

b. SC CODE §27-40-410 DOES NOT MANDATE AN AWARD OF THREE TIMES THE SECURITY DEPOSIT WITHHELD AND SUCH FINDING IS INCONSISTENT WITH THE JURY'S VERDICTS

It is well settled that the words of a statute will be given their plain and ordinary meaning. Miller v. Doe, 441 S.E.2d 319 (1994). The use of the word "may" signifies permission and generally means that the action spoken of is optional or discretionary. State v. Wilson, 274 S.C. 352 (1980). South Carolina has long held "that statutes should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." Abraham v.

Palmetto Unified School District No. 1, 343 S.C. 36, 538 S.E.2d 656, 662 (Ct. App. 2000), *citing* Matter of Decker, 322 S.C. 215, 471 S.E.2d 462, 463 (1995).

SC Code §27-40-410 gives the Court discretion over an award, stating in pertinent part that:

“(b) If the landlord fails to return to the tenant any...security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant *may* recover... money in an amount equal to three times the amount wrongfully withheld and reasonable attorney's fees...”

Nothing within this code section mandates that the Court must (or SHALL) award three times the amount found to be wrongfully withheld. Pursuant to South Carolina law, this Court cannot ignore the word “MAY” contained within the statute, which our courts have defined as signifying optional or discretionary. In this case, the plaintiffs chose to request a trial by jury. The plaintiffs failed to put into evidence one penny of damages. The jury returned a verdict in the amount of \$950 in favor of plaintiffs for their §27-40-410 cause of action. Such verdict is all that plaintiffs should be awarded, if anything.

Plaintiffs rely upon Prevatte v. Ashbury Arms, 302 S.C. 413 (1990) in support of their contention that they should be awarded three times the jury verdict. Prevatte is wholly distinguishable from the facts of our case, and holds no precedential value upon the argument of plaintiffs. In Prevatte the Court looked at whether this statute gives the trial judge the discretion to deny the prevailing tenant attorney's fees. The Court held that the statute does not give the trial judge discretion to deny the prevailing tenant attorney fees, only the discretion as to the amount of such fees and costs. The Prevatte Court did not address the issue of whether the statute mandates an award of treble damages to a prevailing tenant, because that issue was not on appeal. Prevatte does nothing to overturn the litany of South Carolina cases defining the word “may” in statutes and the rules of statutory construction. The Prevatte Court specifically states

that it is not addressing any portion of the statute other than the attorney fee provision. See Id., pg 415.

Pursuant to the statute a court MAY award an amount up to three times the amount wrongfully withheld from the tenant by the landlord and reasonable attorney fees. Giving the trial judge the discretion as to the amount of the award (up to three times the amount wrongfully withheld, and attorney fees to the prevailing tenant) falls in line with the purpose and meaning of The Act. Every case presented is different. Every set of facts is different. The legislature did not include the words "shall" or "must" within the statute because it was conferring the power of discretion to the trial court to determine a justifiable amount.

One can surmise that where there is evidence of malice, willfulness or wantonness on the part of the landlord, the court is given discretion to award three times the amount wrongfully withheld and increase the amount of attorney fees and costs. If, as in this case, there is some technical failure to adhere to The Act, then the court is given the discretion to award an amount less than three times the amount withheld and lessen the amount of attorney fees and costs. There was absolutely no evidence presented that could be construed to show that Ms. Madani acted in some willful, wanton, or malicious manner in the withholding of plaintiffs' deposit. Why would Ms. Madani, a represented defendant, write to a represented plaintiff during litigation, when Ms. Madani has claimed damages in her counter-suit far in excess of any security deposited, the plaintiffs are on notice of the same, and such communication is impermissible? She would not and the SCRCF prohibit the same.

Additionally, where, as is the case here, plaintiffs request a trial by jury, the plaintiffs are relying upon the jury to render an award, as opposed to the Court.

For these reasons if the Court does not dismiss the verdict of the jury in regards to the plaintiffs' S.C. Code §27-40-410 claim, at the very most the Court should render a verdict in an amount of \$950.00.

3. S.C. CODE §27-40-660 DOES NOT REQUIRE THE COURT TO AWARD THREE MONTHS PERIODIC RENT TO PLAINTIFFS AND BOTH PLAINTIFFS CANNOT RECOVER WHERE THERE IS ONE LEASE

S.C. Code §27-60-660 (hereinafter "Ouster Statute" or "The Ouster Statute") is similar to that of S.C. Code §27-40-410 in that it contains the optional and discretionary language of "may," and also includes the mandatory language of "shall." The Ouster Statute states in part:

"If a landlord unlawfully removes or excludes the tenant from the premises...the tenant MAY...recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord SHALL return security recoverable under § 27-40-410." S.C. Code §27-60-660.

The Ouster Statute illustrates that the State legislature knows what it is doing when it uses words and phrases. In the one instance the statute allows the prevailing tenant to recover up to three months' periodic rent or twice the actual damages sustained by him. The statute goes on to require that the landlord SHALL return the security recoverable under §27-40-410 if the rental agreement is terminated. This illustrates the legislature's intent that the tenant's recovery is discretionary and optional up to three months' periodic rent and as to attorney fees and costs. There is no discretion or option given to the court where the rental agreement is terminated.

Not one scintilla of evidence was presented by plaintiffs as to any damage sustained by them as a result of Ms. Madani changing the locks of the apartment. Plaintiffs' testimony differed and changed as to how long they were allegedly "locked out" of the apartment. The jury found that the plaintiffs had been locked out of the apartment because it was an undisputed fact

that Ms. Madani had changed the lock, but the jury awarded nothing to the plaintiffs. As such, they should not receive any amount of judgment in regards to their Ouster Statute claim. Once again, the State legislature is giving discretion to the Court to determine damages based upon the facts and circumstances of individual cases. The plaintiffs demanded a jury trial and the jury found that the plaintiffs had sustained no damages.

Assuming, arguendo, that the Court awards damages to plaintiffs based upon the jury's Ouster Statute verdict, such verdict should only be for the plaintiffs as one, not two separate awards. There was one rental lease in this case. There was one landlord on the lease. There was one tenant in the lease that was comprised of two persons. The lease agreement defines "Tenant" as Rickey and Christy Phelps. Rickey and Christy Phelps, together, is the Tenant, and have one cause of action against their landlord, Ms. Madani. The Ouster Statute gives a cause of action to the "Tenant." There are not two separate lease agreements for Rickey and Christy Phelps. Rickey and Christy Phelps are a married couple and are treated as the "Tenant" for purposes of the lease agreement and The Ouster Statute. There cannot be a double recovery for the Tenant-plaintiffs. Madani cannot seek to recover for unpaid rent and damages twice and plaintiffs cannot be allowed to recover twice pursuant to one lease agreement.

Because The Ouster Statute contains optional language as to the monetary recovery for plaintiffs, plaintiffs should only be allowed to recover what the jury has awarded them, \$0.0. In the event the Court, in its discretion, awards the plaintiffs some amount equal to or less than three months rent, such award can only be one award to the Tenant-plaintiffs.

4. THE LEASE, WHICH THE JURY HAS FOUND PLAINTIFFS' BREACHED, ALLOWS FOR THE PREVAILING PARTY, MADANI, TO RECOVER ATTORNEY FEES AND COSTS

The lease agreement states in part: "Should it become necessary for Landlord or Tenant to employ an attorney to enforce any conditions or covenants hereof, the prevailing party...shall be entitled to reasonable attorney's fees and costs."

Ms. Madani was forced to hire the undersigned to defend her against plaintiffs' claims. Madani countersued plaintiffs, and prevailed, for plaintiffs' breach of the lease by failing to pay rent and damaging the apartment.

Because Madani was the prevailing party at trial, attorney fees and costs must be added to her final award. The attorney fees and costs incurred by Madani for the enforcement of the lease conditions and covenants are in the amount of \$4,275.00. See Exhibit 1, Affidavit of Andrew J. Toney.

CONCLUSION

Ms. Madani must be awarded three months rent (\$2,850.00), three months' rent late payments (\$300), damages (\$301.85), and attorney fees (\$4,275.00), for a total award of \$7,726.85.

Plaintiffs' award for violation of S.C. Code §27-40-410 (security deposit statute) should be dismissed and plaintiffs' award for violation of S.C. Code §27-40-660 (Ouster Statute) should remain. Alternatively, plaintiffs' award of \$950 should remain and be credited towards Madani's judgment.

Plaintiffs did not present one piece of evidence or elicit any testimony that shows Ms. Madani acted with any malice or wantonness towards plaintiffs. The plaintiffs appeared at trial with no one to support their allegations, did not even make an attempt to claim that they had

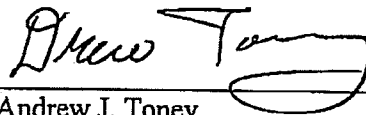
suffered any damages, and admitted to breaching their lease. Plaintiffs' entire case seeks to recover some windfall gain for allegations of technical violations of our State's statutes. Such statutes simply do not make mandatory the damages plaintiffs assert.

Ms. Madani did not want to sue plaintiffs to recoup her lost rent and sustained damages. Plaintiffs' commencement of litigation forced Ms. Madani to seek recovery of her damages. Any amount Ms. Madani is awarded will be offset by any award for plaintiffs; i.e., if Ms. Madani is awarded \$7,726.85 in damages and attorney fees and plaintiffs are awarded \$7,726.85 in damages and attorney fees the net is zero, with each judgment credited toward the other and neither party being permitted to enforce against the other.

Therefore, in accordance with South Carolina common law, South Carolina statutory law, the applicable provisions of the lease and the findings of the jury, Ms. Madani requests that judgment, including attorney fees and costs, be found in her favor in the amount of \$7,726.85.

Respectfully Submitted,

MULLEN WYLIE, LLC



Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711
Attorney for Shamsy Madani

April 25, 2016
Hilton Head Island, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiffs,

vs.

Shamsy Madani,

Defendant.

IN THE MAGISTRATE'S COURT

C.A. No. 2015-CV-0710301411

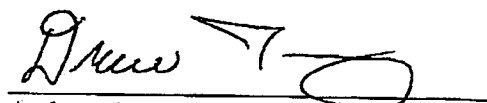
AFFIDAVIT OF ANDREW J. TONEY

PERSONALLY APPEARED BEFORE ME, Andrew J. Toney, who being duly sworn,
states as follows:

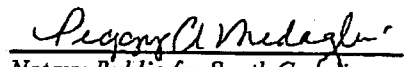
1. I am over 21 years of age, am competent, and am a resident of Beaufort County, South Carolina.
2. I am a member of the South Carolina bar, bar number 73037, and a lawyer with the firm of Mullen Wylie, LLC.
3. I represent Ms. Shamsy Madani in the above-captioned suit.
4. My hourly rate is \$250/hour.
5. Plaintiffs filed the summons and complaint and two subsequent amended complaints.
6. I was hired to answer the various complaints and assert claims on Ms. Madani's behalf pertaining to plaintiffs' breach of their lease.
7. The plaintiffs admitted to breaching their lease, yet refused to pay their contractually obligated amounts.
8. Plaintiffs demanded a trial by jury for this matter, which increased the time and expense of defending the same and prosecuting Ms. Madani's counterclaims.

9. I have reviewed all materials relating to such suit, answered and prepared pleadings, attended a roster meeting, prepared for trial, and attended trial, for a total of 17 hours.
10. Ms. Madani offered to drop her claims, on multiple occasions, if plaintiffs dropped their claims.
11. Plaintiffs refused to drop their claims in exchange for a complete settlement, despite admitting to breaching their lease.
12. My legal fees in this case are \$4,250 for the prosecution of claims that plaintiffs admit to, but failed to remedy, and necessitated by plaintiffs' filing of this suit and demanding trial by jury.
13. Ms. Madani has expended \$25.00 in copying costs and postage related to this litigation.
14. Ms. Madani's total legal fees and costs are \$4,275.00.

FURTHER THE AFFIANT SAYETH NOT.


Andrew J. Toney

SWORN TO before me this 25
day of April, 2016.


Notary Public for South Carolina
My commission expires: 11-21-17

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT)

COUNTY OF BEAUFORT)

C.A. No. 2015-CV-0710301411)

Rickey Phelps and Christy Phelps,)

Plaintiffs,)

CERTIFICATE OF SERVICE)

vs.)

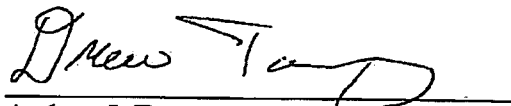
Shamsy Madani,)

Defendant.)

The undersigned certifies that a copy of Ms. Shamsy Madani's Notice of Motion, Motion and Memorandum in Support of Motion for Nisi Additur, New Trial Absolute, Judgment Notwithstanding the Verdict, Attorney Fees and Costs, and in Opposition to Plaintiffs' Demand for Judgment in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Attorney for the Plaintiffs

Chris S. Truluck, Esquire
1720 Main Street, Suite 104
Columbia, SC 29201



Andrew J. Toney

April 26, 2016
Hilton Head Island, SC

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT)

COUNTY OF BEAUFORT)

C.A. No. 2015-CV-0710301411)

Rickey Phelps and Christy Phelps,)

Plaintiffs,)

SHAMSY MADANI'S NOTICE OF MOTION
AND MOTION FOR RECONSIDERATION
AND NEW TRIAL)

vs.)

Shamsy Madani,)

Defendant.)

BEAUFORT CO MAGISTRATE COURT
CENTRAL COURT SOUTH
2016 MAY 20 AM 9:44

YOU WILL PLEASE TAKE NOTICE THAT the Defedant/Counterclaiming Plaintiff, Shamsy Madani (hereinafter "Madani") pursuant to S.C.R.C.P. 59 and 60 will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the Honorable Nancy D. Sadler for an Order of this Court granting her Motion to Reconsider the Court's Order on Post Trial Motions of the Parties filed April 28, 2016 and the Court's Order on Post Trial Motions of the Parties signed on May 12, 2016.

Madani's Motion is based upon the grounds that the Court's Orders were based upon factual errors, errors at law and clerical mistake. The errors include, but are not limited to, the following:

1. Pursuant to Rule 60, SCRPC, Madani requests that the Court correct its Order on Post Trial Motions of the Parties filed on April 28, 2016 as counsel for Madani was never provided a copy of the same and was, therefore, unable to make any motion pursuant to Rule 59, SCRPC, or respond to the Court's requests contained in the Order. Specifically, the Court found that each party was entitled to an award of attorney fees and requested each party submit affidavits of attorney fees and notify the Court if a hearing is requested.

On Thursday, May 12, 2016, Counsel for Madani received an email from the Court attaching the Court's Order on Post Trial Motions of the Parties signed May 12, 2016. On Monday, May 16, 2016, Counsel for Madani inquired to the Court about other orders that may exist in the case. Counsel for Madani was notified that the Clerk of Court emailed to Counsel for Madani the April 28, 2016 Order on April 28, 2016 via the email address Courtmail07_DoNotReply@sccourts.org to the undersigned. Upon review of all emails received by the undersigned on April 28, 2016, in both my "inbox" and "junk mail" folders, no email exists from the Clerk of Court to me on April 28, 2016. As such, I was unable to request a hearing on the attorney fees appropriate or to file a Motion to Reconsider pursuant to Rule 59, SCRPC, or for a new trial, within 10-days of the issuance of the April 28, 2016 Order. The undersigned did not receive the April 28, 2016 Order via email or U.S. Mail and as such, because of the clerical error of the Court, was unable to file the appropriate motions.

2. Pursuant to April 28, 2016 Order, counsel for Madani requests a hearing to determine attorney fees and costs. On April 25, 2016, counsel for Madani filed his Motion for Nisi Additur, New Trial Absolute, Judgment Notwithstanding the Verdict and for Attorney Fees. In support of that motion, the undersigned filed an affidavit of attorney fees. This motion and affidavit were filed within 10-days of the jury being discharged, pursuant to Rule 59, SCRPC. Pursuant to Rule 59, SCRPC, the Rule 59 motion "shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter."

Plaintiffs' motion Rule 59 motion was filed greater than 10-days after the discharge of the jury and is prohibited pursuant to the South Carolina Rules of Civil Procedure. As such, Plaintiffs' Rule 59 motion must be disregarded as untimely.

The lease agreement between the parties states in part: "Should it become necessary for Landlord or Tenant to employ an attorney to enforce any conditions or covenants hereof, the prevailing party...shall be entitled to reasonable attorney's fees and costs."

Ms. Madani was forced to hire the undersigned to defend her against plaintiffs' claims. Madani countersued plaintiffs, and prevailed, for plaintiffs' breach of the lease by failing to pay rent and damaging the apartment.

Because Madani was the prevailing party at trial, attorney fees and costs must be added to her final award

Because counsel for Madani timely filed a motion requesting attorney fees and costs only Madani's motion should be considered and only Madani should be awarded attorney fees and costs, and due to the clerical mistake discussed above a hearing should be granted to determine Madani's attorney fees and costs.

3. Madani requests that a new trial be granted as the jury's verdict of zero dollars to plaintiffs is irreconcilable as a matter of law. In South Carolina such verdict requires the granting of a new trial.

Madani requests a new trial be granted as it is evident from the jury's verdict that such verdict is so confused that it is not absolutely clear what was intended. See Anderson v. Aetna Casualty and Surety, 175 S.C. 254 (1934); Camden v. Hilton, 360 S.C. 164 (Ct. App. 2004).

Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge should not be required to guess as to what the jury sought to render. Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003). The trial court did not abuse its discretion by granting a new trial under the "thirteenth juror doctrine" where the

2 verdicts handed down by the jury were inconsistent and were not justified by the evidence.

Buxton v Thompson Dental Co., 415 SE2d 844 (Ct. App 1992).

Any magistrate may grant a new trial in any case tried in his court for reasons for which new trials have usually been granted in the courts of law of this State...S.C. Code Ann. § 22-3-990.

The court cannot lawfully enter judgment on an inconsistent or incomplete verdict.

Stevens v. Allen, 336 S.C. 439 (Ct. App. 1999), Krepps by Krepps v. Ausen, 324 S.C. 597 (Ct. App. 1996).

The jury verdict in this case favors Madani and it is evident from the verdict that the jury found in favor of Madani. It is not possible based upon the verdict of the jury that Madani should now be ordered to pay in excess of \$9,000 to the losing parties.

In part, the jury found in favor of plaintiffs for the unlawful ouster claim and awarded zero dollars. Once a plaintiff proves damages proximately caused by the defendant, the verdict of zero damages is inconsistent or incomplete as a matter of law. See Stevens, at 449-450. In Johnson v. Phillips, 315 S.C. 407, 433 S.E.2d 895 (Ct.App.1993), *rev'd in part on other grounds*, 318 S.C. 453, 458 S.E.2d 427 (1995), this Court held:

In this case, the jury returned a verdict in nuisance of "no dollars" actual damages for the plaintiff. As a matter of law, this was either an inconsistent or incomplete verdict. If the jury found the defendant did not unlawfully interfere with the plaintiff's use and enjoyment of his land, even though the diversion of surface water was annoying or harmful to him, the verdict was legally inconsistent. On that view of the evidence, the verdict should have been for the defendant. If the jury found an unlawful interference amounting to a private nuisance, but no actual damages resulting to the plaintiff, it should have returned a verdict for the plaintiff and awarded nominal damages (i.e., one dollar). If it found unlawful interference resulting in actual damage to the plaintiff, even if the amount of the damages was difficult to ascertain, the jury had a duty to return a verdict for the plaintiff and to award damages in a specific dollar amount that, in its best judgment, based on the evidence before it, would compensate the plaintiff for his actual loss. Having found the fact of damage, the jury was required to find the amount of damage. In either of these latter cases, a verdict of "no dollars" for the plaintiff is legally

incomplete. Since the defendant is liable for violating the plaintiff's substantive right, the plaintiff is entitled by law to an award of damages.

Johnson, 315 S.C. at 415-16, 433 S.E.2d at 900-01.

The South Carolina Supreme Court affirmed the Court of Appeals in Stevens V. Allen, 342 S.C. 47, 536 S.E.2d 663 (2000), and stated:

A verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law. We hold that, if a jury finds the plaintiff has failed to prove damages proximately caused by the defendant's negligence, then its verdict should be for the defendant. We agree with the Court of Appeals' conclusion that, under South Carolina law, the proper and most consistent approach of treating such verdicts is to require, upon request, the trial court to re-submit the matter to the jury. If the jury cannot reach a consistent verdict, the trial court may then order a new trial nisi or a new trial absolute.

Plaintiffs failed to request that the Court resubmit the matter to the jury. The only remedy available now is that a new trial be ordered. Madani requests that a new trial be granted so that a verdict in accordance with South Carolina law may be rendered.

4. Plaintiffs' award of damages pursuant to their claims are barred by res judicata, collateral estoppel or in the alternative a new trial must be granted due the inconsistency of the jury's verdict.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999)). "[F]or purposes of *res judicata*, 'cause of action' is not the form of action in which a claim is asserted

but, rather the cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon." Id.

"The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable principles." Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct.App.1995) (citing Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944)). In Watson, our supreme court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation[])[.] ... Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

205 S.C. at 221–22, 31 S.E.2d at 319–20.

It is uncontested by the parties that the plaintiffs were ejected from the subject apartment by a suit previously filed by Madani seeking ejectment. Madani filed a civil action against plaintiffs styled Shamsy Madani v. Rickey Phelps and Others, Civil Case Number 2015CV0710301177. Such Complaint sought ejectment for plaintiffs failure to pay rent when due or when demanded. Plaintiffs failed to answer or otherwise respond to such Complaint and by Order of this Court on November 12, 2015, a Writ of Ejectment was entered by this Court. Plaintiffs in such previous civil action failed to counterclaim against Madani for any cause of action and in fact failed to answer the Complaint. As such, Madani's allegations were admitted by plaintiffs, accepted by the Court and plaintiffs were ejected.

Res judicata and collateral estoppel preclude all claims made by plaintiffs in the instant action.

Additionally, by the verdict of the jury, plaintiffs are precluded by collateral estoppel from recovering under their theory of violation of the security deposit statute contained within the S.C. Landlord Tenant Act, S.C. Code Ann §27-40-410. The jury cannot find that plaintiffs have breached their lease and owe Madani rent for failing to pay it and at the same time order that plaintiffs are owed their security deposit. At the very least this is an inconsistent verdict, which requires the granting of a new trial, pursuant to South Carolina law discussed above. It is impossible for Madani to owe plaintiffs their security deposit and at the same time be owed unpaid rent. Plaintiffs lived rent free in Madani's apartment for three months and the jury found that plaintiffs had breached their lease agreement, as did the Court in the ejectment proceeding.

Plaintiffs are barred by res judicata and collateral estoppel from asserting the claims contained within their lawsuit.

5. Madani requests the Court to reconsider its May 12, 2016 Order on Post Trial Motions of the Parties as it is in error as to attorney fees and the judgment in favor of plaintiffs. It is unclear in the Court's Order as to whether the Court considered the affidavit of the undersigned and the undersigned was not able to be heard on the matter of attorney fees and costs. In the Court's April 28, 2016 Order it orders that both parties are to be awarded attorney fees and costs, requests affidavits of the attorneys, and requests that counsel notify the Court if a hearing is requested.

Counsel for Madani would have requested such hearing and would have resubmitted his affidavit of fees and costs had he received such Order. Madani requests that a hearing be held on attorney fees and costs.

6. Pursuant to Rule 60, SCRCF the clerical mistake of the Court should be corrected by the Court to specify a date of judgment, so that Madani may file all appropriate motions, if the Court deems that the instant would be otherwise time barred. It is unclear as to which Order of the Court is determinative as to the commencement of the prescribed time limits in which a party has to file a Rule 59 motion. Because counsel for Madani never received from the Court the April 28, 2016 Order, the Court should correct the clerical mistake and issue a new Order.

7. If an award is merely inadequate or unduly liberal, the trial judge alone has the discretion to grant a new trial *nisi additur*. Easler v. Hejaz Temple, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985). In order to grant a moving party additur, the Court must determine that the jury award was inadequate based upon the evidence. See Bailey v. Peacock, 318 S.C. 13 (1995).

The jury in this case found that plaintiffs breached their lease for failing to pay rent. It is undisputed that the plaintiffs lived in the apartment until November 21, 2016. It is undisputed, and the plaintiffs freely admitted, that they did not pay rent for the months of September, October and November 2015. The jury in this case found that the plaintiffs breached their lease by failing to pay rent. The jury's award for breaching the lease by failing to pay rent is inadequate for the number of months that the plaintiffs failed to pay rent and rent late charges.

For these reasons, the judgment in favor of Ms. Madani for plaintiffs' failure to pay rent must be increased from \$1,050.00 to \$3,150.00, or in the alternative a new trial must be ordered pursuant to new trial *nisi additur*.

7. Pursuant to Rule 59, Madani requests the Court reconsider its Order in regards to plaintiffs claim for violation of S.C. Code §27-40-410. By the filing of Madani's counterclaim and the ruling of the Court in the Order for Writ of Ejectment, plaintiffs were on notice that Madani claimed the security deposit.

SC Code §27-40-410 states in pertinent part:

"(a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant's noncompliance with Section 27-40-510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy and delivery of possession and demand by the tenant, whichever is later. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address, the tenant is not entitled to damages under this subsection provided the landlord (1) had no notice of the tenant's whereabouts and (2) mailed the written notice and amount due, if any, to the tenant's last known address."

The South Carolina Residential Landlord and Tenant Act (hereinafter "Act" or "The Act") defines "notice" in SC Code §27-40-240. SC Code §27-4-240 states in pertinent part:

"(A) A person has notice of a fact if:

- (1) the person has actual knowledge of it;
- (2) the person has received a notice or notification of it; or
- (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

(B) A person "notifies" or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

- (1) it comes to his attention; or

(2) in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication; or

(3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt."

In October 2015, Madani filed her civil Application for Ejectment against plaintiffs for their failure to pay rent. Plaintiffs failed to answer such complaint. Plaintiffs were ejected for their admitted failure to pay rent. There can be no better notice to plaintiffs than a civil complaint alleging failure to pay rent, properly served upon them. Plaintiffs failed to answer or otherwise plead in regards to the Application for Ejectment, thereby admitting the allegations contained therein. They were on notice of Madani's claim to their security deposit, pursuant to the terms of the residential lease agreement, when Madani served them with the Application for Ejectment.

Plaintiffs commenced the instant action by and through their attorney. Plaintiffs filed this action on December 1, 2015. Ms. Madani answered the plaintiffs' complaint and immediately asserted a counterclaim for plaintiffs' failure to pay several months rent and causing damage to the apartment, all in violation of the lease agreement. Plaintiffs did not notify Ms. Madani of their new address until two months after moving out of the apartment, after which time their lawsuit had been commenced and Ms. Madani had countersued them for failing to pay several months rent and causing damage to the apartment.

Pursuant to The Act's definition of "Notice," Ms. Madani gave notice or notification to plaintiffs when she filed and served her Application for Ejectment and answered plaintiffs' complaint and counterclaimed for plaintiffs' failing to pay rent for several months and damaging the apartment. Madani actually gave notice to the plaintiffs, through their attorney, that the

plaintiffs owed Madani more than the security deposit before the plaintiffs ever attempted to comply with The Act by sending a letter to Madani requesting return of the security deposit. Plaintiffs admitted they owed rent by failing to answer the Application for Ejectment. How can it be possible that plaintiffs can make any claim to the unreturned security deposit?

Plaintiffs attempt to manipulate The Act to recover some amount of damages for violation of The Act is wholly unsupported by the South Carolina Rules of Civil Procedure and The Act itself.

As a matter of law, plaintiffs' claim for violation of SC Code §27-40-410 "Security Deposits" must be dismissed. Plaintiffs' claim is for a technical violation of The Act, which was not violated if the entire Act is applied to the procedural history and facts of this case.

Plaintiffs claim for violation of The Act should be dismissed as a matter of law.

8. Pursuant to Rule 59, Madani requests that the Court reconsider its award of three times the amount of the security deposit to plaintiffs. S.C. Code §27-40-410 does not mandate an award of three times the security deposit withheld and such finding is inconsistent with the jury's verdicts.

It is well settled that the words of a statute will be given their plain and ordinary meaning. Miller v. Doe, 441 S.E.2d 319 (1994). The use of the word "may" signifies permission and generally means that the action spoken of is optional or discretionary. State v. Wilson, 274 S.C. 352 (1980). South Carolina has long held "that statutes should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." Abraham v. Palmetto Unified School District No. 1, 343 S.C. 36, 538 S.E.2d 656, 662 (Ct. App. 2000), citing Matter of Decker, 322 S.C. 215, 471 S.E.2d 462, 463 (1995).

SC Code §27-40-410 gives the Court discretion over an award, stating in pertinent part that:

“(b) If the landlord fails to return to the tenant any...security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover... money in an amount equal to three times the amount wrongfully withheld and reasonable attorney’s fees...”

Nothing within this code section mandates that the Court must (or SHALL) award three times the amount found to be wrongfully withheld. Pursuant to South Carolina law, this Court cannot ignore the word “MAY” contained within the statute, which our courts have defined as signifying optional or discretionary. In this case, the plaintiffs chose to request a trial by jury. The plaintiffs failed to put into evidence one penny of damages. The jury returned a verdict in the amount of \$950 in favor of plaintiffs for their §27-40-410 cause of action. Such verdict is all that plaintiffs should be awarded, if anything.

Pursuant to the statute a court MAY award an amount up to three times the amount wrongfully withheld from the tenant by the landlord and reasonable attorney fees. Giving the trial judge the discretion as to the amount of the award (up to three times the amount wrongfully withheld, and attorney fees to the prevailing tenant) falls in line with the purpose and meaning of The Act. Every case presented is different. Every set of facts is different. The legislature did not include the words “shall” or “must” within the statute because it was conferring the power of discretion to the trial court to determine a justifiable amount.

For these reasons if the Court does not dismiss the verdict of the jury in regards to the plaintiffs’ S.C. Code §27-40-410 claim, at the very most the Court should render a verdict in an amount of \$950.00.

9. Madani requests this Court, pursuant to Rule 59, SCRC, reconsider its award of three months periodic rent to plaintiffs for their claim pursuant to S.C. Code §27-60-660.

S.C. Code §27-60-660 (hereinafter "Ouster Statute" or "The Ouster Statute") is similar to that of S.C. Code §27-40-410 in that it contains the optional and discretionary language of "may," and also includes the mandatory language of "shall." The Ouster Statute states in part:

"If a landlord unlawfully removes or excludes the tenant from the premises...the tenant MAY...recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney's fees. If the rental agreement is terminated the landlord SHALL return security recoverable under § 27-40-410." S.C. Code §27-60-660.

The Ouster Statute illustrates that the State legislature knows what it is doing when it uses words and phrases. In the one instance the statute allows the prevailing tenant to recover up to three months' periodic rent or twice the actual damages sustained by him. The statute goes on to require that the landlord SHALL return the security recoverable under §27-40-410 if the rental agreement is terminated. This illustrates the legislature's intent that the tenant's recovery is discretionary and optional up to three months' periodic rent and as to attorney fees and costs. There is no discretion or option given to the court where the rental agreement is terminated.

Not one scintilla of evidence was presented by plaintiffs as to any damage sustained by them as a result of Ms. Madani changing the locks of the apartment. Plaintiffs' testimony differed and changed as to how long they were allegedly "locked out" of the apartment. The jury awarded plaintiffs zero dollars. As such, they should not receive any amount of judgment in regards to their Ouster Statute claim. The jury's award of zero dollars indicates their ruling is in favor of Madani. The plaintiffs demanded a jury trial and the jury found that the plaintiffs had sustained no damages. Plaintiffs did not request that jury further deliberate on the damages. The jury's verdict was in favor of Madani and should stand or a new trial should be ordered.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,

Plaintiffs,

vs.

Shamsy Madani,

Defendant.

IN THE MAGISTRATE'S COURT

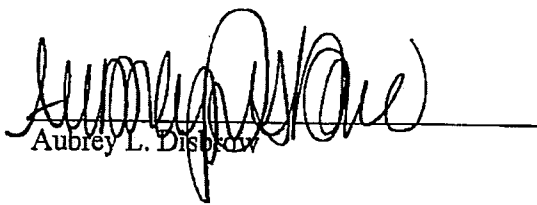
C.A. No. 2015-CV-0710301411

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Shamsy Madani's Notice of Motion and Motion for Reconsideration and New Trial in the above-captioned matter was served upon all counsel of record, via United States Mail and/or email, postage prepaid, at the addresses below:

Attorney for the Plaintiffs

Chris S. Truluck, Esquire
 1720 Main Street, Suite 104
 Columbia, SC 29201



Aubrey L. Diskin

May 20, 2016
 Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Rickey Phelps and Christy Phelps,
Plaintiff(s),

vs.

Shamsy Madani,
Defendant(s).

IN THE MAGISTRATE'S COURT

C/A NO: 2015CV0710301411

AFFIDAVIT IN SUPPORT OF AWARD OF
REASONABLE ATTORNEY'S FEES

Chris S. Truluck, personally appeared before me, on this day and after being duly sworn, according to law, and upon my oath and states as follows:

1. That this affidavit is made on the basis of my personal knowledge and in support of the Plaintiffs' suit against Shamsy Madani ("Defendant") for violations of S.C. Code § 27-40-660 and violation of S.C. Code § 27-4-410 as found by the Jury on April 18, 2016.
2. On or about October 19, 2015 Rickey and Christy Phelps ("Plaintiffs") contacted me seeking legal advice as a result of their unlawful ouster of their residence by Defendant.
3. On October 24, 2015, after conducting research on Plaintiffs' action, I accepted representation and the responsibility for costs on a contingency fee basis of 33.3.% of any award and drafted a demand letter to Defendant for proposed settlement of the case in the amount of \$3,075.00. A copy of Plaintiff's fee agreement is hereby attached as Exhibit B. A copy of Plaintiff's demand letter is hereby attached as Exhibit C.
4. On October 28, 2015, I received approximately three calls from Defendant and discussed the case with her for a total of an hour. She offered to waive any amounts outstanding to settle the matter but denied any settlement to Plaintiffs.
5. From November 3 to November 9, 2015 I conveyed Defendant's counteroffer to Plaintiffs and that offer was declined. My clients decline was conveyed to Defendant on November 9, 2016.
6. On November 10, 2015 I drafted Plaintiffs' Summons and Complaint w/ Cover Letter to Court and, upon review by Plaintiffs, mailed the pleading with filing fee on November 24, 2015.

7. Until December 18, 2015 I continued to receive requests, calls and voicemails from Defendant and complied with these requests to again forward to her the demand letter and pleadings.
8. On December 18, 2015, I was first contacted by Drew Toney as Defendant's counsel by way of emailed letter threatening to initiate frivolous proceeding by stating, "[i]f your clients chose to institute litigation, Ms. Madani will counterclaim for all damages allowed by South Carolina law, including frivolous proceedings." A copy of Defendant's correspondence is hereby attached as Exhibit C.
9. On December 21, 2016 I spoke with Defendant's counsel regarding his frivolous claims countersuit and informed him of the events at hearing on Defendant's request for ejectment on October 28, 2015 and validity of Plaintiffs' claim.
10. On or about January 14, 2016 I received a copy of Defendant's Answer and Counterclaim and informed my clients of the same and potential consequences.
11. On January 22, 2016 I amended Plaintiff's Complaint in the necessity of pleading general non-compliance pursuant to S.C. Code § 27-40-610 where it is only available as a counterclaim or defense to a claim for damages for rent.
12. On February 25, 2016 I attended a pre-trial conference and made requests for bifurcation of the claims, discovery from Defendant and inquired from Defendant's counsel why he had not answered the Plaintiff's Amended Complaint; similarly that he was liable to be held in default.
13. Upon information and belief, John Castellano, as custodian for the Bluffton Clerk of Court, believes that Defendant's counsel never requested a copy of the audio transcript of Defendant's ejectment proceedings held on October 28, 2015.
14. On February 25, 2016, as a result of Defendant's failure to take any action in response to Plaintiff's letter requesting return of their security deposit, I again amended Plaintiffs' Complaint to include a claim for violation of S.C. Code § 27-4-410.
15. On April 4, 2016, I researched and drafted Plaintiffs' Reply to Defendants Amended Answer and Counterclaim in order to preserve defenses as presented at trial and as instructed to the Jury.

16. From April 13 to April 17, 2016, I researched and drafted jury instructions, verdict forms and the nature of defenses and presentation in civil jury trials in preparation of trial scheduled on April 18, 2016.

17. On April 18, 2016 I successfully presented Plaintiffs' case-in-chief while simultaneously presenting Plaintiffs' rebuttal to Defendant's case-in-chief and defenses.

18. I obtained verdicts in Plaintiffs' favor on all Plaintiffs' claims and reduced damages against Plaintiff in as much as \$3,000.00. At the current time, I have obtained an order awarding almost four times the Defendant's verdict.

19. Upon return of the verdicts, this Court requested memorandum regarding the application of treble damages to Plaintiff's verdicts and on April 19, 2016, I provided case law on point addressing the application of treble damages in the hopes of avoiding incurring additional attorney's fees. Defendant's made no response to my correspondence and so I incurred additional fees in drafting Plaintiffs' ten page memorandum in support of trebling Plaintiffs' verdicts.

20. On April 25, 2016 Defendant submitted its memorandum in defense against trebling damages but also moved for a new trial and judgment notwithstanding the verdict despite having failed to preserve its motions at trial at the directed verdict stage.

21. Defendant's counsel also prematurely submitted a request for an award of attorney's fees although the contractual provision in the subject lease only provided for attorney's fees to the prevailing party.

22. On April 27, 2016, I drafted a return to Defendant's motion for new trial, JNOV and attorney's fees.

23. On May 2, 2016, upon receipt of this Court's order finding for Plaintiff in the amount of \$5,700 and Defendant in the amount of \$1,316.85, award of attorney's fees to both parties and consolidation of Jury Verdicts to Plaintiff for violation of S.C. Code § 27-40-660, I drafted Plaintiffs motion for reconsideration of the award of attorney's fees to the non-prevailing party and judgment notwithstanding the verdict.

24. I have been a member South Carolina Bar and active litigator for nearly eight (8) years and in good standing throughout.

25. I attest, as confirmed in conversation with South Carolina Legal Services' attorney, Adam Protheroe, that I am one of the few lawyers handling Residential Landlord Tenant Act cases in South Carolina.

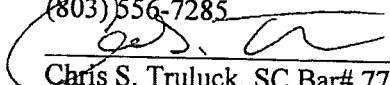
26. I asserts that the nature, extent and difficulty of this case was great in that it involved multiple claims, counterclaims, defenses and issue seldom reviewed by the appellate courts.

27. I committed no less than sixty (60) hours of my time to the preparation and litigation of this case.

28. My hourly rate is \$250.00.

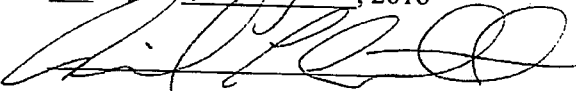
29. A copy of my accounting is hereby attached as Exhibit ~~E~~ in the amount of \$14,480.00 and is a true and accurate business record for the Truluck Law Firm, each entry created by me at the time of execution.

Truluck Law Firm, LLC
1720 Main Street, Suite 104
Columbia, SC 29201
(803) 556-7285


Chris S. Truluck, SC Bar# 77829
Attorney for Plaintiff

SWORN TO BEFORE ME this

3 day of May, 2016



Notary Public

My commission expires: 2-27-23

IN THE MAGISTRATE'S COURT
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

JURY TRIAL

RICKEY PHELPS AND CHRISTY PHELPS,

Plaintiffs,

vs.

CASE NO. 2015-CV-0710301411

SHAMSY MADANI,

Defendant.

BEFORE: THE HONORABLE NANCY D. SADLER,
MAGISTRATE JUDGE

REPORTED RONDA K. BLANTON, RPR
BY: NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

1 the -- the door and everything. They contacted
2 her. Told her that she was wrong for changing
3 the locks and that she needed to --

4 MR. TONEY: Objection.

5 THE COURT: No, no hearsay. You can't
6 repeat what other people told you or him.

7 THE WITNESS: Okay.

8 Q. Just keep it what -- what's in your
9 observation.

10 A. Okay.

11 THE COURT: And the jury should
12 disregard that.

13 Q. We'll let -- we'll let Mr. Phelps
14 testify to anything about that.

15 A. Yes.

16 Q. Now, shortly thereafter, were eviction
17 proceedings initiated against you?

18 A. Yes. After that.

19 Q. Do you remember about what time you were
20 served with any eviction proceedings?

21 A. It was later in October. I don't know
22 the exact date.

23 Q. Well, let me ask you this too. When did
24 you actually regain access to the property?

25 A. It had been over a week.

1 Q. Some time after, that you came and met
2 with me in my office; is that correct?

3 A. Yes.

4 Q. Okay. And you retained my services
5 pursuant to at least some of this litigation;
6 correct?

7 A. Correct.

8 Q. At some time later, did you mail a
9 letter to Miss Madani asking that your security
10 deposit be returned?

11 A. Yes.

12 Q. (Inaudible.) Now, this is Plaintiff's
13 Exhibit 3. Would you take a look at that and
14 tell me what it is to the best of your
15 recollection?

16 A. Asking for my security deposit to be
17 returned of 950 dollars with the address for it
18 to be mailed to.

19 Q. And -- and can you say -- well, it has
20 the address on it. That's what you're telling
21 the jurors?

22 A. Yes.

23 Q. It has the address. And let me bounce
24 back a little bit.

25 The Judge in this case has already

1 MR. TONEY: May I set up my --

2 (Inaudible.)

3 THE COURT: Sure.

4 CROSS-EXAMINATION

5 BY MR. TONEY:

6 Q. Mrs. Phelps, you don't dispute that you
7 entered into a lease agreement with Mrs. Madani;
8 isn't that correct?

9 A. No, I do not.

10 Q. And the terms of that lease agreement
11 were that you were to pay 950 dollars per month
12 in rent to Mrs. Madani; is that correct?

13 A. Yes.

14 Q. If you didn't pay that rent within five
15 days of the first of the month, there was a 100
16 dollar late charge; is that correct?

17 A. Yes.

18 Q. And you testified earlier and it was --
19 I didn't completely understand all the months and
20 dates, but there was some payment issue in -- in
21 July of 2015; is that correct?

22 A. Yes.

23 Q. And you never paid any -- any late fee
24 in July of 2015, did you?

25 A. No.

1 Q. All right. And then August of -- of
2 2015, you paid August of 2015 rent; is that
3 correct?

4 A. Yes.

5 Q. All right. In September there was
6 another issue with the payment of the rent; is
7 that correct?

8 A. Yes.

9 Q. And you testified that you've never paid
10 September of 2015's rent; isn't that correct?

11 A. Correct.

12 Q. All right. And you never paid October
13 of 2015's rent; is that correct?

14 A. I wasn't responsible.

15 Q. Did you ever pay October of 2015's rent?

16 A. No.

17 Q. Did you ever pay November of 2015's
18 rent?

19 A. No.

20 Q. Did you ever pay any portion of December
21 of 2015's rent?

22 A. No.

23 Q. Did you ever pay any late charges for
24 September of 2015?

25 A. No.

1 Q. Did you ever pay any late charges for
2 October of 2015?

3 A. No.

4 Q. Did you ever pay any late charges for
5 November of 2015?

6 A. No.

7 Q. Did you ever pay any late charges for
8 December of 2015?

9 A. No.

10 Q. All right. We talked about this key
11 issue and -- and you -- you don't dispute that --
12 that you received --

13 MR. TONEY: May I approach, Your Honor?

14 THE COURT: Yes.

15 Q. You don't dispute that you received
16 exhibit -- Exhibit 1, do you?

17 A. No, I do not.

18 Q. All right. And -- and Exhibit 1 is a
19 notice that was posted to Apartment 219 in
20 Westbury; is that correct?

21 A. Yes.

22 Q. And that notice was received by either
23 you or your husband; is that correct?

24 A. Correct.

25 Q. And upon receiving that notice, you

1 probably mimic whatever Mrs. Phelps said.

2 Do you -- do you agree with everything
3 that you've heard that she recites so far as far
4 as what you actually witnessed?

5 A. Yes.

6 Q. Were you also locked out of the
7 apartment in question?

8 A. I was.

9 Q. Can you tell me about how much time you
10 were locked out of that apartment?

11 A. To the best of my remembrance, a minimum
12 of two weeks. Somewhere in that neighborhood.
13 You know, I --

14 Q. And there was some questions that
15 Mrs. Phelps was not able to answer because she
16 was not there.

17 A. Right.

18 Q. Could you address some of those issues?

19 A. The initial one starting from --

20 MR. TONEY: Your Honor, I object. I
21 don't know what the question is.

22 THE COURT: You don't either.

23 MR. TRULUCK: Well, Your Honor, I
24 suppose there's a -- once I was leading. Once
25 it's too broad. I'll try to straighten a little

1 THE COURT: Yes, sir.

2 Q. Let me hand you what was previously or
3 has been marked as Plaintiff's Exhibit No. 4.
4 Could you flip through that document and -- and
5 identify it for me?

6 A. What part of it? All of it? On top?

7 Q. If you could just look at it and tell me
8 what it is.

9 THE COURT: Let me just tell the jury in
10 case I doubt y'all would notice it. We had the
11 lease agreement marked at Plaintiff's No. 1. We
12 found the original. So we marked it No. 4. I
13 kept the copy here, and I'm not going to send it
14 back to you. We've got the original in evidence.
15 So that's the reason for the difference in
16 numbers. Okay. Go ahead.

17 A. This is the lease that I signed with
18 Mr. and Mrs. Phelps.

19 Q. Okay. And -- and when was that lease
20 entered into?

21 A. March 20.

22 Q. Okay. And if you go to the -- to the
23 last page of -- of that lease, to the very last
24 page, Mrs. Madani.

25 A. Uh-huh.

1 Q. Is your signature on that page?

2 A. Yes.

3 Q. Okay. And -- and what is the date of --
4 of signing of this lease?

5 A. 3-17.

6 Q. What year?

7 A. 2015.

8 Q. Okay. And -- and below the signature
9 lines for Rickey Phelps and Christy Phelps, what
10 is that writing down there?

11 A. I gave my address to them so they can
12 get in touch with me if they want or send the
13 rent or whatever they wish to get in touch with
14 me.

15 Q. Okay. And -- and how was the -- the
16 rent to be -- to be paid to you?

17 A. Monthly.

18 Q. Okay. And -- and how much was the rent?

19 A. 950.

20 Q. All right. And -- and how was that 950
21 dollars to -- to get to you?

22 A. The first day of each month and the
23 second day it's already delinquent; however, it's
24 okay within five days. I accept that.

25 Q. Okay. And after five days of the first

1 of month, what happens?

2 A. If they are late, there's 100 dollars
3 late fee.

4 Q. Okay. But how were you personally or
5 physically to get the -- the rent payment each
6 month?

7 A. I get from all my tenant. They mail it
8 to me.

9 Q. Okay. And -- and where do they mail it
10 to?

11 A. To this address, 111 Cutter Circle,
12 Bluffton, South Carolina 29909.

13 Q. Okay. And what is that address?

14 A. My house.

15 Q. Okay. And -- and did the -- did the
16 Phelps mail their rent to you?

17 A. Maybe once. Or twice. Mostly they
18 insist they come and bring it to me.

19 Q. All right. And did the Phelps give you
20 a security deposit?

21 A. Yes, they did.

22 Q. And how much was the security deposit?

23 A. 950.

24 Q. All right. And what is that security
25 deposit meant for?

1 A. To go towards if the apartment is
2 damaged, if they break something, and if they
3 don't keep it good, and if there's something
4 wrong with it, and to be fixed, then that -- and
5 also if the rent is not paid. That is -- that
6 security deposit goes for all the fixing if
7 there's damage. And it's also rent is not paid.

8 Q. Okay.

9 A. And cleaning. All of that.

10 Q. Do you know when the Phelps moved into
11 the apartment?

12 A. They moved in -- they were supposed to
13 move in the 20th.

14 Q. Of what month?

15 A. March.

16 Q. 2015?

17 A. 2015.

18 Q. Okay. And did they pay you April rent?

19 A. Yes.

20 Q. Okay. And did they pay you May rent?

21 A. Yes.

22 Q. Did they pay you June rent?

23 A. Yes.

24 Q. Did they pay you July rent?

25 A. Not July rent. They -- I did not

1 Q. Let me hand you this blue piece of
2 paper. Do you recognize that blue piece of paper
3 that I've handed you?

4 A. Yes.

5 Q. Okay. And -- and what is that blue
6 piece of paper?

7 A. This was one of the sticker on the door
8 frequently, and there was more. Yes, this is
9 from furniture store.

10 Q. And did you -- did you pull that -- that
11 blue notice off of Apartment 219?

12 A. Yes, I did.

13 Q. Okay. And -- and can you -- were there
14 many of those type stickers on the door or a few?

15 A. Yes. There was more.

16 Q. More than that one?

17 A. Even from one church also that we
18 haven't heard from you.

19 Q. Okay.

20 A. That was there and --

21 MR. TONEY: Your Honor, I move to
22 introduce this as Defense Exhibit No. 2.

23 THE COURT: Any objection?

24 MR. TRULUCK: No objection, Your Honor.

25 Q. Okay. And what was the condition of --

1 of the door to Apartment 219?

2 A. No good. And they were -- seemed like
3 they were pushed in and out to -- it was loose.
4 And the lock was literally one or two more push,
5 that lock would have been out.

6 Q. Okay.

7 A. So --

8 Q. And is it your responsibility as the
9 landlord to keep the apartment in good condition?

10 A. Of course.

11 Q. At some point in October, did you change
12 the lock to Apartment 219?

13 A. I -- the last time I went there, it was
14 October 2; and I thought that, okay, this door is
15 going to get break into and I'm going to protect
16 them. And I called locksmiths, and I changed the
17 lock -- the key that somebody was putting in the
18 lock to open the door didn't -- maybe they could
19 open it broke in there. So I called the
20 locksmith, and he came; and he removed it, and he
21 fixed and put the new lock there and gave me the
22 new key.

23 Q. Okay. And do you know what date you --
24 you changed the lock?

25 A. 2. October 2.

1 Q. 2015?

2 A. Yes, 2015.

3 Q. Let me hand you what's been marked
4 previously as Plaintiff's Exhibit No. 1. Can you
5 identify Exhibit No. 1 for me?

6 A. Yes. This -- this is -- this is the day
7 I did, and I put this on the door.

8 Q. How did you attach that to the door?

9 A. A piece of tape.

10 Q. Okay. And what date did you do that?

11 A. October 2.

12 Q. Okay. And how do you know it was
13 October 2?

14 A. Because I remember I did -- I -- the
15 October 2 I -- you must have the --

16 Q. Well, let me ask you this: Do you keep
17 a -- a calendar of -- of -- (Inaudible.)

18 A. Yes, yes. Everything I do I put it on
19 my calendar.

20 Q. Okay.

21 A. Uh-huh.

22 MR. TONEY: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q. Let me hand you this document.

25 A. Yes.

1 was there. And we went -- the third floor --
2 apartment's on third floor. We went up to third
3 floor, and sheriff said, oh --

4 MR. TRULUCK: Objection, Your Honor.

5 A. No, I can't. Okay.

6 Q. Don't tell me what the sheriff said.

7 A. Okay.

8 Q. What happened when you got to the
9 apartment?

10 A. We saw the -- we saw the door lock
11 changed, and they didn't leave the key with
12 anybody off --

13 Q. Who did?

14 A. Mr. Phelps.

15 Q. Okay.

16 A. And Mrs. Phelps. They didn't leave the
17 key with office. They didn't give me the key.
18 They didn't give the key to -- to anybody and
19 they left.

20 Q. All right. (Inaudible.)

21 A. And they also --

22 Q. Let me stop you right there.

23 A. Okay.

24 Q. So when you got to the -- to the
25 apartment, the -- the lock had been changed?

1 A. Lock that's been changed.

2 Q. Okay. Let me --

3 MR. TONEY: May I approach, Your Honor?

4 THE COURT: Yes.

5 Q. Let me hand you this document.

6 A. Yes. This is the locksmith.

7 Q. Okay. I've handed you a document,

8 and -- and can you identify that for me?

9 A. Yes. It is the locksmith and they -- he
10 changed the locks and -- and put a brand new one
11 there.

12 Q. Okay.

13 A. And we paid him 117 dollars and 50
14 cents.

15 Q. Okay. You paid the locksmith 117
16 dollars and 50 cents --

17 A. Yes.

18 Q. -- to change the lock?

19 A. Yes.

20 Q. Okay.

21 MR. TONEY: Your Honor, we'd like to
22 introduce this as Defense Exhibit No. 4.

23 A. Yes.

24 THE COURT: Any objection?

25 MR. TRULUCK: Yes, Your Honor.

1 THE COURT: Okay.

2 Q. That's actually -- so Exhibit No. 4, is
3 that the invoice you paid for the changing the
4 lock after the Phelps had moved out?

5 A. Yes.

6 Q. And what necessitated that? What made
7 that necessary?

8 A. To get in.

9 Q. Okay.

10 A. To get into the apartment.

11 Q. Okay. All right. And do you know
12 who -- who had changed the locks?

13 A. The locksmith.

14 Q. I know the locksmith changed them for
15 you. Do you -- do you know who changed the locks
16 before you got there?

17 A. Mr. Phelps and Mrs. Phelps.

18 Q. Okay.

19 A. And the 13 that they were to be out of
20 there, I don't know the day before they did it or
21 when they did and --

22 Q. Okay.

23 A. -- because we were there almost to the
24 end to check and see.

25 Q. Once you gained access into the

1 apartment, what did it look like?

2 A. Yes. Bad. Water, the toilet was
3 busted. Broken. Water everywhere. The carpet
4 was all wet. And they -- all the -- the wall was
5 wet. And all the smoke alarms was taken out of
6 the ceiling and on the kitchen counter. And the
7 shades for the light fixture all taken down on
8 the kitchen counter. And the dust all over
9 the -- the fan and dirt everywhere, and we
10 just -- I couldn't believe it that they left it
11 like that.

12 The dust doesn't show in the video or
13 anything and -- and we took picture, and it's
14 there; and the toilet was busted.

15 Q. Okay. Let me ask you about the toilet
16 and the plumbing.

17 Did you have to hire somebody to come in
18 and repair the toilets?

19 A. I sure did. I did. I called the
20 plumbing, yes.

21 MR. TONEY: Your Honor, may I approach
22 the witness?

23 THE COURT: Yes.

24 A. Yeah.

25 Q. I'm handing you a document. Can you

1 identify this document?

2 A. Yes. That's the job invoice, and this
3 is the plumber that we called and came and
4 stopped the water and changed the broken toilet
5 and fixed it; and I paid him 141 dollars and 25
6 cents.

7 Q. Okay.

8 MR. TONEY: Your Honor, I move to
9 introduce this as Defense Exhibit --

10 THE COURT: Five.

11 MR. TONEY: -- 5.

12 THE COURT: Any objection?

13 MR. TRULUCK: No objection, Your Honor.

14 Q. Okay. And you testified that the --
15 the -- or did you testify that the apartment was
16 dirty?

17 A. Yes.

18 Q. And did you -- did you have to pay
19 somebody to do any sort of special cleaning of
20 this apartment?

21 A. Yes, yes. I called Jessica Johnson from
22 Johnson Cleaning Company; and she's been cleaning
23 places for me for long time, even cleaning my own
24 house. And she came.

25 I do two kinds of cleaning, regular or

1 deep cleaning. The deep cleaning is we will
2 remove the -- they will remove the refrigerator,
3 stove, and they clean all in behind the
4 appliances; and they vacuum the fan blades, and
5 they clean the blinds. And they clean the place,
6 and they wash all the baseboard; and they scrub
7 the bathrooms, and that's a cleaning. Deep
8 cleaning.

9 Q. Let me hand you this document,
10 Mrs. Madani. Can you identify that for me?

11 A. Yes. That is the Johnson's Cleaning
12 Company, and I paid them 125. And that's not
13 really what she charges others; but because I
14 have so many places and she does a lot, even my
15 own house, so she charges less.

16 Q. So she's kind of giving you a deal on --
17 (Inaudible.)

18 A. Yes.

19 MR. TONEY: Your Honor, I move to
20 introduce this as Defense Exhibit No. 6.

21 A. Yes.

22 THE COURT: Any objection?

23 MR. TRULUCK: No objection, Your Honor.

24 Q. All right. Was there anything wrong
25 with the smoke alarms in the apartment?

1 A. I called the electrician. He came, and
2 he said I don't know.

3 Q. Don't tell me what he said. But can you
4 just tell me, was there anything visibly wrong
5 with the smoke detectors?

6 A. They have taken it off the ceiling, out
7 of the ceiling; and they left them on top of the
8 kitchen counter. I don't know why they did that.
9 If -- if it did -- if it needs battery, it's the
10 tenant's duty to put -- replace the battery.
11 It's in the lease.

12 Q. Okay. And did you pay somebody to -- to
13 come and make the repairs to the smoke detectors?

14 A. Yes.

15 Q. Okay. Let me hand you --

16 A. I called the electrician.

17 Q. -- (Inaudible.)

18 A. Yes.

19 Q. If you could just look at that; and
20 after you've had a chance to review it, let me
21 know what it is.

22 A. Yes. It is the company -- the
23 electrician came and installed all the smoke --
24 smoke alarm and charged 130 dollars. I paid him,
25 and this is the invoice.

1 Q. Okay.

2 MR. TONEY: Your Honor, I move to

3 introduce this as Defense Exhibit No. --

4 (Inaudible.)

5 A. Yes.

6 THE COURT: Any objection?

7 MR. TRULUCK: No objection, Your Honor.

8 A. And key to mailbox.

9 Q. All right. And how are people -- people
10 that live in Westbury, how are they to get their
11 mail?

12 A. There is a mailbox, one for every
13 apartment.

14 Q. Okay. And is there a key for that
15 mailbox?

16 A. There's only one key that goes to the
17 tenant; and when they move, they will return to
18 the office or to myself.

19 Q. Okay. And when the Phelps left the
20 apartment, did they leave you a key to the
21 mailbox?

22 A. No.

23 Q. All right. And did you have somebody
24 come out and -- and make -- change the lock for
25 the mailbox?

1 A. Yes. And there is a law that nobody can
2 fix or locksmiths that cannot do the change the
3 key to the mailbox of apartment building. Only
4 Post Office.

5 Q. Okay.

6 A. And I called the Post Office, and they
7 came and changed it.

8 Q. Okay. Let me hand you this receipt; and
9 if you could, look at it and let me know what it
10 is.

11 A. This is the 40 dollars that I paid for
12 the key to the mail -- Post Office. I don't know
13 who they sent --

14 Q. Okay.

15 A. -- to do that.

16 Q. You paid 40 dollars to change the lock
17 on the mailbox?

18 A. That's correct.

19 Q. Okay.

20 MR. TONEY: Your Honor, I move to
21 introduce this as Exhibit No. 8.

22 A. Yeah.

23 MR. TRULUCK: No objection, Your Honor.

24 MR. TONEY: You say no objection?

25 MR. TRULUCK: Uh-huh.

1 MR. TONEY: Okay.

2 Q. All right. Pursuant to the -- the terms
3 of the lease --

4 A. Water.

5 Q. -- who were -- who was to be responsible
6 for paying the water bills for the apartment?

7 A. Tenants pay water bills and electricity.

8 Q. Okay. And at the time the -- the Phelps
9 left the Apartment 219, were there any
10 outstanding water bills?

11 A. Plenty.

12 Q. Okay. Do you know how many -- how much
13 in water the Phelps had not paid?

14 A. 260 some dollars.

15 Q. Okay. Let me hand you a document; and
16 after you've looked at it, let me know whether or
17 not this --

18 A. Yes.

19 Q. -- you recognize that document.

20 A. That's correct. And there is the total
21 of 261 dollars and 85 cents total of water bill
22 that they --

23 Q. All right. Let's back up for a second.
24 There's some highlighting on that.

25 A. Yes.

1 Q. Who did that highlighting?

2 A. The company. The -- either they did or
3 the office because this mail came to me from the
4 office of Westbury because the High Tide is the
5 management for the Westbury. Between them, this
6 came to the office.

7 Q. Okay.

8 A. And the office send it to me.

9 Q. Let me -- the first -- (Inaudible.)
10 Invoice No. 6719.

11 A. Yes.

12 Q. What dates are -- are that invoice for?

13 A. 11-3-2015.

14 Q. No, no. If you look at -- at -- you got
15 11-3-25015 and Invoice No. 6719?

16 A. Yes.

17 Q. To the right of that, does it tell you
18 what dates of service that is for? If you
19 look -- if you look at the -- the left-hand
20 column says date; correct?

21 A. Date. Yes.

22 Q. Okay. And then if you go down to
23 11-3-2015.

24 A. It says that is --

25 Q. Invoice No. 6719.

1 A. Yes. It says 200.

2 Q. Yes, ma'am. I'm not asking about the
3 price. I'm asking you about the date.

4 A. Okay. 11-3-2015.

5 Q. Okay. And then to the right of that, it
6 has an invoice number; correct?

7 A. Yes. That's 6719.

8 Q. Okay. And what are the dates for
9 service --

10 A. Oh, yes. 7-1 9 to 30-2015.

11 Q. Okay. But that line item is -- is it
12 referring to charges July 1 through August 30,
13 2015?

14 A. Correct.

15 Q. And that -- how much was that -- how
16 much is the amount for that?

17 A. 238 dollars and 39 cents.

18 Q. Okay. And then if you go down to -- to
19 the last line item, is that another line item for
20 water -- (Inaudible.)

21 A. Yes, yes. And that is for 10-31-2015.

22 Q. What is the amount of -- of water usage
23 or water bill for that period?

24 A. 23 dollars 46 cents. And then the total
25 comes to 261 dollars 85 cents.

1 Q. And whose responsibility is it to pay
2 that, that water bill?

3 A. Tenants, Mr. and Mrs. Phelps.

4 Q. And did they ever pay that 261 dollars
5 and 85 cents?

6 A. As you see, no.

7 Q. Okay.

8 MR. TONEY: Move to introduce this --

9 A. I did.

10 MR. TONEY: -- as Defense Exhibit No. 9.

11 THE COURT: Nine.

12 MR. TONEY: Nine. The Post Office was
13 eight.

14 THE COURT: Any objection?

15 MR. TRULUCK: No objection.

16 Q. Are there any other invoices or bills
17 associated with the Phelps' -- the --
18 (Inaudible.) Apartment 219?

19 A. The rents.

20 Q. The rents, yes. And we'll summarize
21 that in a minute, but so we have the -- the
22 locksmith charge of 117 dollars and 50 cents.

23 A. Yes.

24 Q. You have the plumbing charge of 141
25 dollars and 25 cents.

1 A. Correct.

2 Q. You have the cleaning charge of 125
3 dollars.

4 A. Correct.

5 Q. You have the smoke alarm change of 130
6 dollars.

7 A. Correct.

8 Q. You have the key charge of 40 dollars.

9 A. Correct.

10 Q. And then you have the water bills for
11 261 dollars and 85 cents.

12 A. Correct.

13 Q. And those are damages that you're
14 looking to the Phelps to reimburse you for; is
15 that right?

16 A. Yes.

17 Q. All right. And were any pictures taken
18 at the time right after the -- the Phelps moved
19 out?

20 A. Yes.

21 Q. Okay. Let me hand you a group of
22 photographs. If you could just go through each
23 of those yourself; and when you finish, let me
24 know whether or not you can -- what these
25 photographs are.

1 A. Yes. This is the carpet.

2 Q. Let's do it this way. It might be too
3 difficult to do them all -- (Inaudible.)

4 A. Okay.

5 THE COURT: Why don't I number them, and
6 we'll see what's admitted and what's not.

7 MR. TONEY: Okay.

8 THE COURT: So it starts with 11; is
9 that right?

10 MR. TONEY: Pardon? The exhibit number?

11 THE COURT: Yes.

12 MR. TONEY: 10.

13 THE COURT: (Inaudible.)

14 THE WITNESS: But you don't have a
15 sticker on that. Oh. Jury fell asleep. They
16 are asleep. That's --

17 THE COURT: Exhibits 10 through 33 are
18 marked for identification only.

19 THE WITNESS: That's it.

20 (Inaudible.)

21 THE WITNESS: Yeah.

22 MR., TONEY: I think, Your Honor, I'm
23 just going to use a couple of these rather than
24 go through all of them.

25 THE COURT: Okay.

1 MR. TONEY: But I still want to --
2 unless the defense will stipulate to all of them
3 being -- (Inaudible.)

4 MR. TRULUCK: (Inaudible.)

5 MR. TONEY: Okay. Okay. Let's just do
6 that then.

7 Q. Mrs. Madani, let me hand you what has
8 been marked as Defense Exhibit 10 for
9 identification purposes only, 10 through 33. And
10 if you could, flip through those; and once you
11 have, let me know what they depict, just in
12 general.

13 THE COURT: General.

14 A. What I picked?

15 Q. No. What they show.

16 A. Oh, oh, oh, okay.

17 Q. Not each picture, but just in general,
18 what are these pictures of?

19 A. Yes. It's the -- the stove and then the
20 carpet and --

21 Q. Is it of Apartment 219?

22 A. Yes.

23 Q. Okay. And when were those photographs
24 taken?

25 A. The cleaning lady before she cleaned,

1 she take.

2 Q. Okay. Is that after the Phelps --

3 A. Yes.

4 Q. -- moved out?

5 A. Yes.

6 Q. And was it before a new tenant had moved
7 in?

8 A. No, no. Before.

9 Q. Okay.

10 A. Before. We don't -- we -- we clean the
11 place and then -- regardless. When tenant
12 leaves, we clean the place; and then somebody
13 else moves in.

14 Q. Okay. And do those photographs depict
15 what you saw when you first entered the
16 apartment?

17 A. Correct.

18 Q. And once you opened the door, is that
19 what the Phelps --

20 A. That's what it was, yes. Uh-huh.

21 Q. Okay.

22 A. And most -- mostly the cleaning.

23 MR. TONEY: (Inaudible.) As Defense
24 Exhibit 10 through 33.

25 THE COURT: Any objection.

1 MR. TRULUCK: No objection, Your Honor.

2 Q. Let me just ask you about a couple of
3 pictures. I don't want to go through all of
4 these. I know we're all getting late in the day.

5 A. Okay.

6 Q. If you look at Exhibit 28, what is
7 Exhibit 28 a picture of?

8 A. That is the bathtub.

9 Q. Okay. What is that picture showing?

10 A. Dirty.

11 Q. Okay.

12 A. It's the -- the fan.

13 Q. And what is Exhibit 22 showing you?

14 A. That's the carpet.

15 Q. Was the carpet wet?

16 A. Wet. Yes.

17 Q. Did you have to clean that?

18 A. Cleaning lady did.

19 Q. What does Picture 19 showing the jury?

20 A. You see there, dirt.

21 Q. Okay.

22 A. They you go.

23 Q. How about Defense Exhibit 18?

24 A. Yeah. That's the blind that was --

25 Q. It's a broken blind?

1 A. Yeah. That's a --

2 Q. Is exhibit -- what is Exhibit 16
3 showing?

4 A. The wet carpet.

5 Q. Okay. And Exhibit 11, what is that?

6 A. Stove.

7 Q. Okay. Okay. I believe you testified to
8 this, but there was never any rent paid for
9 November; is that right?

10 A. That's correct.

11 Q. Okay. Was there any rent ever paid by
12 the Phelps for December?

13 A. December they weren't there.

14 Q. Okay. When did you rent the apartment
15 out again?

16 A. March 17.

17 Q. No. When did you rent it out to
18 somebody new?

19 A. That's what I did. Happen to be
20 March 17, 2016.

21 Q. Didn't you rent the apartment to
22 somebody new in December?

23 A. Yes. I'm sorry.

24 Q. Was it December 17 --

25 A. Yeah.

1 cleaning was not done; and they locked the door,
2 and they didn't give us the key. There was no
3 reason for the lock to be changed. They left,
4 but they did it. And they took the key and took
5 the key to the mailbox, and they -- they just did
6 all of that.

7 Q. And how about the unpaid rent?

8 A. Yes. And they never paid the rents for
9 August -- September, October, November.

10 Q. Okay.

11 A. They didn't pay rent.

12 Q. Okay. And -- and would you dispute that
13 950 -- you had 950 dollars in a security deposit;
14 is that right?

15 A. That's correct.

16 Q. And any amount of -- of damages which
17 includes rent, you would apply that 950 dollars
18 security deposit toward that; is that right?

19 A. That is the lease says and we -- yes. I
20 did.

21 Q. And -- and when the Phelps moved out
22 around November 21 of 2015, they didn't -- they
23 never sent a forwarding address to you, did they?

24 A. No.

25 Q. It wasn't until the next time you heard

1 Q. You would have filed a lawsuit against
2 them if they hadn't -- if they had not filed a
3 lawsuit against you, you would have filed a
4 lawsuit against them?

5 A. No, no.

6 Q. Okay. And as part of your damages, as
7 we sit here today, you're claiming the late fee
8 for July.

9 A. I'm --

10 Q. You're claiming the rent and the late
11 fee for September; is that correct?

12 A. For September, October, November.

13 Q. Okay. And then are you claiming part of
14 the rent for December?

15 A. December.

16 Q. Or half of December?

17 A. November.

18 Q. You're claiming for November. Are you
19 claiming half of the rent for December?

20 A. December.

21 Q. Okay. And that rent all along was 950
22 dollars?

23 A. That's correct.

24 Q. And the late fee was 100 dollars?

25 A. That's correct.

1 Q. And we've already gone through all
2 the -- the damages --

3 A. Yes.

4 Q. -- you had to pay after the Phelps moved
5 out; is that right?

6 A. Yes.

7 Q. Are there any other damages that you're
8 claiming in this lawsuit?

9 A. No.

10 MR. TONEY: Okay. Miss Madani, that's
11 all the questions I have for you. Please answer
12 any questions that Mr. Truluck may have for you.

13 THE WITNESS: Okay. I -- I want to just
14 say something.

15 MR. TONEY: Well, you can't say it
16 unless you have a question.

17 THE WITNESS: Okay. All right.

18 THE COURT: I'll tell you what, I'm
19 going to let the jury walk around for a minute
20 'cause it's getting -- we all ate lunch, and you
21 guys are probably tired. Why don't you guys get
22 some water and -- so we'll take about two or
23 three minutes.

24 UNIDENTIFIED VOICE: Your Honor, how
25 much time, ma'am?

1 Q. And we've already gone through all
2 the -- the damages --

3 A. Yes.

4 Q. -- you had to pay after the Phelps moved
5 out; is that right?

6 A. Yes.

7 Q. Are there any other damages that you're
8 claiming in this lawsuit?

9 A. No.

10 MR. TONEY: Okay. Miss Madani, that's
11 all the questions I have for you. Please answer
12 any questions that Mr. Truluck may have for you.

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