

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Morgan Conley,  
Plaintiff,  
vs.  
April Morganson,  
Defendant.

C.A. 2016-CP-40-04139

ORDER

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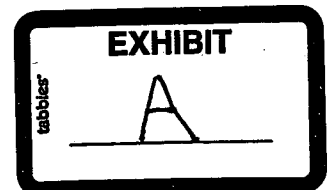
SC Court of Appeals

This matter was before the Court as a non-jury trial. Present at the hearing was the Plaintiff with her attorney, Richard Whitt. Also present was the Defendant with her attorney, S. Jahue Moore, Jr.

Pre-trial motions were made in this case. The Defendant moved to dismiss the case based upon Judge Manning's Order of June 12, 2017. The Defendant argued that Judge Manning's Order was dispositive of the case. The Defendant's Motion was respectfully denied and the trial commenced.

The testimony in this trial consisted of the Plaintiff. The Plaintiff on direct examination, clearly established a lease agreement with the Defendant. The Plaintiff further testified that after signing the year-long lease agreement with the Defendant, she communicated with the Defendant that she would not be able to make her rent payments and that she desired to rescind the lease. The Plaintiff further testified that she provided the Defendant her first month's rent payment of \$1,200.00, along with a security deposit for an additional \$1,200.00.

Documentation was entered into evidence which clearly indicated extensive communication between the parties by email. It is clear from the communications that the



Plaintiff attempted to rescind the lease. It is clear the Defendant refused to rescind the lease and insisted upon strict compliance with the lease. It is further clear the Defendant made a reasonable effort to mitigate her damages in that she immediately relisted the property in question for lease. Within approximately 45 days, the Defendant was able to find another tenant for her building.

There is absolutely no doubt the Plaintiff breached the Lease Agreement between the parties. There is absolutely no doubt the Plaintiff owed the Defendant for approximately three months of rent. It is clear the Plaintiff only paid the Defendant for one month of rent.

It is clear from the Lease Agreement between the parties that in such circumstances, the security deposit may be used to satisfy the tenant's rent obligation. Here, the Defendant applied the security deposit toward the Plaintiff's monthly rent payment. The Defendant documented same through the various email communications between the parties. The Defendant provided the Plaintiff with a full accounting of the application of the security deposition toward the Plaintiff's rent obligation.

The written lease between the parties does not provide for certified mail communications between the parties. The lease simply requires the parties to communicate about certain things. Here, it is abundantly clear that the parties communicated by email over every aspect of the lease and the Plaintiff's breach of the lease.

The Plaintiff asserts that the South Carolina Landlord/Tenant Act requires certain notifications to be sent by Certified Mail. South Carolina Code §27-40-240(b)(1) provides that a person receives a notice or notification when it comes to his attention or (2) in the case of the landlord is delivered at the place of the business of the landlord through which the rental agreement was made or at any place held out by the tenant as the place for receipt of the communications; or (3) in the case of the tenant, it is delivered in the 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 presence of the designation to the tenant's last known place of residence. The South Carolina Landlord/Tenant Act certainly requires certified mail notification in certain instances but, as set forth above, and as is the case in this situation, the Plaintiff clearly received email notification of all aspects concerning the parties' lease.

The Plaintiff simply argues that although she breached a lease and failed to abide by its terms, her security deposit and rent payment should be returned because the Defendant did not provide her a certified letter informing her of the Defendant's intentions.

The testimony presented by the Plaintiff clearly establishes that the Defendant has abided by all the terms of the parties' lease. The testimony further shows that the Defendant fully complied with the South Carolina Residential Landlord/Tenant Act. The testimony further reveals that the Plaintiff has failed to meet her burden of proof at today's hearing. As such, the Defendant, upon the close of the Plaintiff's case, made a motion pursuant to Rule 41 for an involuntary non-suit. The Defendant's motion is hereby granted and this matter is dismissed.

Upon the dismissal of the Plaintiff's case, the Defendant elected not to proceed with her counterclaim and formally abandoned the counterclaim. As such, the matter concluded.

The above is hereby made an Order of this Court. The Plaintiff's case is dismissed with prejudice. The Defendant's counterclaim is dismissed with prejudice by motion of the Defendant, herself.

IT IS SO ORDERED.

\_\_\_\_\_  
Clifton Newman  
Presiding Judge

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 2019



Richland Common Pleas

**Case Caption:** Morgan Conley vs April Morganson

**Case Number:** 2016CP4004139

**Type:** Order/Other

So Ordered

s/ Clifton B. Newman, 2127