

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Civil Action No. 2016-CP-40-04139
Appellate Case No. 2019-001533

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SC Court of Appeals

Morgan Conley.....Plaintiff/Appellant,

vs.

April Morganson.....Defendant/Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Was the lower Court correct in granting the Respondent's Motion for involuntary non-suit and in finding the Appellant breached her lease agreement with the Respondent; was provided sufficient notice of the Respondent's intention to mitigate her damages; was provided sufficient notice of the Respondent's decision to apply the Appellant's security deposit toward unpaid rent; and was otherwise properly treated under the parties' lease agreement?

STATEMENT OF THE FACTS

In May of 2016, the Appellant/Tenant and Respondent/Landlord entered into a written lease agreement (Transcript of Record, Page 13 Line 21). The lease was for a period of one year and required the Appellant to pay rent for one year (Transcript of Record, Page 14 Line 16).

The parties fully executed the written lease agreement and the Appellant acknowledged at trial that she signed the lease agreement without threat or coercion.

Prior to moving into the Respondent's home, the Appellant emailed the Respondent and asked to "break the lease" (Transcript of Record, Page 16 Line 19). In response, the Respondent informed the Appellant that she would not be willing to break the lease (Transcript of Record, Page 22 Line 22).

Through digital communication, the Appellant informed the Respondent that she would not be moving into the property and that she could not perform under the lease agreement. By written digital communication, the Respondent informed the Appellant that she would attempt to mitigate her damages by finding another tenant (Transcript of Record, Page 27 Line 17).

The parties' lease agreement was to begin in May of 2016. The Respondent was able to find a new tenant in July of 2016 (Transcript of Record, Page 28 Line 17). The Respondent lost three months of rent as a result of the Appellant's decision to breach the lease agreement.

The Appellant acknowledges her breach of the lease agreement (Transcript of Record, Page 30 Line 12).

When the Appellant signed her lease agreement, she paid a first month's rental payment as well as a \$1,200.00 security deposit. As a result of the Appellant's breach of contract, the Respondent applied the Appellant's security deposit toward the two months of rent she did not receive. The written lease agreement signed by the parties provides that the Respondent may apply the security deposit toward any unpaid rent so long as the Appellant is provided notice and an itemization (Transcript of Record, Page 33 Line 6). The Respondent provided the Appellant with a written communication indicating that she would be applying the security deposit toward the unpaid rent and, in doing so, explained exactly why the security deposit was being held and what it was being applied for (Transcript of Record, Page 36 Line 1).

The Appellant received the actual written communication from the Respondent concerning her intention to apply the security deposit toward the unpaid rent (Transcript of Record, Page 37 Line 25). Despite receiving the notification, and through this lawsuit, the Appellant seeks the return of her security deposit based upon the fact that she did not receive a certified letter as opposed to a digital communication.

ARGUMENT

By her own admission, the Appellant breached the lease between the parties at issue in this matter (Transcript of Record, Page 30 Line 19/Page 30 Line 21). The Appellant acknowledges not only breaching the lease but also owing the Respondent three months' worth of unpaid rent (Transcript of Record, Page 30 Line 21). The parties' lease agreement provides that in the event of a breach and in the event of a failure to pay rent during the breach, the Appellant's security deposit may be applied toward any unpaid rent. (Defense trial exhibit #2 was clearly offered and accepted into evidence during trial as made apparent from the trial transcript. However, the exhibit did not appear in the Respondent's version of the Transcript of Record.)

Throughout this matter, the parties communicated extensively through email. The Respondent clearly communicated to the Appellant she wished to abide by the parties' written lease agreement (Transcript of Record, Page 22 Line 22). Despite this, the Appellant breached the agreement and now seeks the return of her security deposit despite owing rental income to the Respondent.

The Respondent made every effort to mitigate her damages under the circumstances. Beginning in May of 2016, the Respondent attempted to find another tenant. The Respondent was successful in July of 2016 (Transcript of Record, Page 27 Line 17). Regardless, two months' of rent remained due.

Very clearly, and by electronic communication, the Respondent informed the Appellant of her decision to apply the security deposit toward the unpaid rent. The written communication was clear and received by the Appellant (Transcript of Record, Page 36 Line 1).

The Appellant's position is that she breached a lease agreement, failed to pay rent, owes the Respondent money, yet is entitled to the return of her security deposit based upon the fact that she received an email instead of a certified letter.

What is important to note is that the Appellant received written notification of the Respondent's intention to apply the security deposit toward the unpaid rent. There is absolutely no doubt that the communication was received. The Appellant acknowledged receipt of the electronic communication at trial. Her position, at trial, was that the communication should have been by way of a certified letter (Transcript of Record, Page 36 Line 1).

The language of the parties' lease agreement controls. If the Respondent decides to apply the Appellant's security deposit toward unpaid rent, the lease simply requires that notice and an accounting be given. Notice and an accounting was provided to the Appellant (Transcript of Record, Page 36 Line 1).

The parties are allowed the opportunity to contract between themselves. South Carolina Code §27-40-310 provides that "a landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties."

In this case, the written lease agreement only provides that the parties may communicate by written communication. The actual lease agreement does not require communication by certified mail.

The Appellant argues that the South Carolina Landlord Tenant Act requires certified mail communication when dealing with security deposits. Even if this were so, South Carolina Code §24-40-310 permits a landlord and tenant to negotiate and create their own terms and conditions of a lease. Here, no certified mail requirement is set forth in the written lease and, as such, the

written communication sent by the Respondent to the Appellant concerning the security deposit satisfies the terms and conditions of the lease.

Additionally, South Carolina Code §27-40-240(b) provides that “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 it comes to his attention; **or** in the case of the landlord 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 tenant as the place for receipt of the communication; **or** in the case of the tenant, it is delivered in the hand, to 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. Proof of mail pursuant to this subsection constitutes notice without proof of receipt.” (emphasis added) According to South Carolina Code §27-40-240, notice is accomplished if the matter comes to the attention of a party. There is absolutely no doubt that the Appellant received a written communication concerning her security deposit (Transcript of Record, Page 36 Line 1). This is acknowledged by the Appellant herself (Transcript of Record, Page 37 Line 25). The parties exchanged multiple emails throughout the negotiation of this written lease and during its termination.

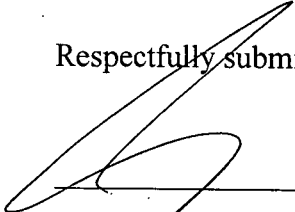
The Appellant would have this Court reverse the lower Court’s decision based upon an absurdity. The Appellant acknowledges having received notice from the Respondent concerning her security deposit; however, the Appellant argues that because the notice was not a certified letter, the lower Court should have returned her security deposit despite the fact that she received notice and actually owed the money. The lower Court properly granted Respondent’s motion for an involuntary non-suit. There is no legal justification for the return of the Appellant’s security deposit. The lease does not provide for certified mail notice under these circumstances. Further,

under the Residential Landlord Tenant Act, the notice requirement is met if notice is actually received. Here, notice was clearly received by the Appellant's own admission.

CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the Order of the Circuit Court and Trial Court be affirmed.

Respectfully submitted,



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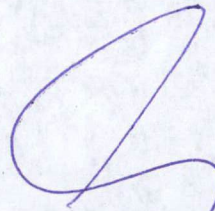
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CERTIFICATE OF COMPLIANCE

I, S. Jahue Moore, Jr., as counsel for Respondent, hereby certified that the Final Brief of Respondent complies with Rule 211 (b), of the South Carolina Appellate Court Rules.

Respectfully submitted,



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