

The Tenant's appeal to this Court is subject to the following: the Tenant must obtain and post an appeal bond pursuant to Rule 241 of the of the South Carolina Rules of Appellate Practice and Sections 18-7-10 and 27-37-130 of the South Carolina Code; the Tenant must obtain and post a supersedeas bond pursuant to Rule 62 of the South Carolina Rules of Civil Procedure, and the Tenant must file a Bond Staying Execution on Appeal with the Simpsonville Summary Court pursuant to Section 27-37-130 of the South Carolina Code.

Justin Stoddard, the tenant, and appellant resides at 117 Eagleston Ln, Simpsonville SC. The tenant started the tenancy on December 20, 2020. The lease signified a monthly rent of \$1695.00. In March 2021, American Homes 4 Rent (AH4R), offered and the tenant accepted a Covid-19 amendment to the lease, spreading out nearly \$4,000 and adding additional months to the lease. This amendment would amend rent to \$1937.68 for the remainder of the lease terms. This amendment would enable tenant to be caught up and have a zero balance for the month of April.

On or around September 25, 2021, AH4R, filed eviction proceedings against the tenant for non-payment of rent while waiting to receive funds from the Greenville County ERAP Rental Assistance Program. AH4R had agreed with the tenant and the ERAP to not evict the tenant as the ERAP Rental Assistance intended to pay the past due of more than \$11,000.00. The ERAP program sent AH4R a check of approx. \$8,000.00 on behalf of the tenant on August 20, 2021.

On or around October 1, 2021, the appellant retained the service of an attorney to help fight the eviction since payment had been guaranteed. On or around October 12, rent funding was finalized and AH4R didn't go forward with the eviction filing and was sent a check for \$8,280.78. This would clear any and all balances and bring the account to zero. On October 21, 2021, AH4R posted attorney fees in an excess of of \$590.00 and another charge on November 17, 2021 to the tune of \$550.00.

The tenant disputed that he should have to bill the Respondent's attorney fees during the same month without notice and attempted to pay his regular monthly rent. AH4R refused to accept any payment less the attorney fees and would send the appellant's rent monies back as it didn't include the attorney's fees. Even more so, the attorney fees that are in dispute aren't attorney fees that a Court has determined that AH4R is entitled to. In order for AH4R to enforce the payment of attorney fees, they should be sanctioned or ordered to be paid by the losing party. Because no such action existed in October or November the enforcement of attorney fees cannot be with the same enforcement of payment of rent.

The lease provision does allow for the recovery of attorney's fees to AH4R under certain circumstances. The Tenant maintains that AH4R cannot simply at their discretion add attorney fees and require them to be paid along with rent payment and then sue for non-payment of rent. According to the Residential Landlord and Tenant act, **rent** is defined as *the consideration payable for use of the premises including late charges whether payable in lump sum or periodic payments, excluding security deposits or other charges*. This means that attorney fees and utilities cannot be included in past-due rent amount, despite the written language in the lease agreement.

November and December, AH4R refused monthly rent less utilities and attorney fees. On Dec. 7, 2021, Appellant filed a Fair Housing Complaint at the advisement of his attorney. The complaint alleges that AH4R violated tenants' rights based on the Fair Housing and Covid-19 being a disability recognized. The complaint has been accepted by South Carolina Human Affairs Commission for investigation.

In January 2022, tenant asked AH4R for a copy of the rental ledger as AH4R had prevented access to it via the rental portal. At this time, tenant was notified by AH4R that they were pursuing eviction for no-payment of rent. The appellant contacted SC Legal Services and was given legal counsel.

The appellant requested a jury trial. A pre-trial hearing was set on February 16, 2022, before Judge Laura Saunders. Judge Saunders proceeded to try the matter as Rule to Show Cause hearing before being well into the trial with the appellant reminded her that he thought he was attending a hearing to set bond. The tenant was scrutinized during the hearing under the premise of a Rule to Show Cause, materially damaging his position for a subsequent jury trial. Nonetheless, Appellant attempted to ask that the magistrate court use the definition found in **SECTION 27-40-210** of the Residential Landlord Tenant Act to define ***rent as consideration payable for use of the premises including late charges whether payable in lump sum or periodic payments, excluding security deposits or other charges and*** to determine while the jury trial is pending that rent be set at the fair-market rent value. The Residential Landlord and Tenant act defines ***"fair-market rental value" means the actual periodic rental payment for comparable rental property to which a willing landlord and a willing tenant would agree. In determining the fair-market rental value, the court may consider appraisals offered by the tenant, landlord, realty experts, licensed appraisers, and other relevant evidence.***

The tenant acts that bond be set at the "fair-market rental value" because **SECTION 27-40-790** of the act maintains:

In any action where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement: (a) The tenant is required to pay the landlord all rent which becomes due after the issuance of a written rule requiring the tenant to vacate or show cause as rent becomes due and the landlord is required to provide the tenant with a written receipt for each payment except when the tenant pays by check. If the landlord and tenant disagree as to the amount of rent or the time of payments thereof, the court shall hold a hearing as soon as feasible after the issues have been joined, and preliminarily determine the matter. If the basis for the disagreement of the amount of rent due is the landlord's alleged violation of the rental agreement or the provisions of this chapter, the rent to be paid must be the fair-market rental value of the premises at the time of the hearing.

The appellant was notified through a newly printed rental ledger given minutes before the hearing that he allegedly owed \$11, 076.26. Appellant attempted to talk through the rental ledger with the judge, but the judge responded: "I am not going to forensically go through your rental ledger." Not walking through it didn't allow the appellant to show the judge a series of misapplied charges and other charges that AH4R says is owed. Much scrutiny should be taken so that AH4R does not pad the ledger thus increasing what is owed. The judge set bond for the total back rent owed of \$11,076.26 including the disputed attorney fees and other charges allegedly owed (there are several other miscellaneous fees that aren't rent that is showed owed; the appellant disputes these charges) and without examination and due within 5 days In order to proceed with the right to the jury trial.

In October 2020, South Carolina Chief Justice Beatty circled a memo directing magistrates to cease ordering tenants to post past due rent in a residential eviction in order to stay the eviction on appeal. Code §27-40-800 (b) of the South Carolina Residential Landlord Tenant Act requires that ***it is sufficient to stay execution of a judgment for ejection that a tenant sign an undertaking that he will pay the landlord the amount of rent as it becomes due periodically after the judgment was entered.*** Nowhere in that statute is payment of past due rent required to stay the execution of judgment pending appeal in a residential eviction appeal.

Code § 27-40-790 is not applicable to a residential eviction appeal as it is inconsistent with Code § 27-40-800. Likewise, Code §27-37-130 is not applicable to residential landlord tenant matters as it is also inconsistent with 27-40-800 and applies only to commercial landlord tenant evictions.

This should be the case in this process. A judge or jury hasn't determined that the attorney fees allegedly owed can be defined as rent according to the Landlord Tenant Act and if the Landlord Tenant Act supersedes the residential lease made between the appellant and AH4R.

Judge Saunders did not answer the appellant when he asked to give notice to AH4R, his intent to raise a defense pursuant to **S.C. Code § 27-40-910** based on Plaintiff's retaliatory conduct based on a complaint filed with the SC Housing Board on December 6, 2021.

1. Defendant is informed and believes that Plaintiff's conduct was willful as defined by S.C. Code § 27-40-210(16).

2. Plaintiff's claim to rent, if any, should be offset by any amount recoverable by Defendant pursuant to the counterclaims stated herein

This would so be another reason that appellant disagrees with the bond amount set.

Lastly, the Magistrate court failed to properly notify the Appellant of the Rule to Show Cause or Vacate to defend against the Respondent's claims of nonpayment. The Residential Landlord and Tenant Act defines service of rule, posting and mailing requirements:

The copy of the rule provided for in Section 27-37-20 may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates' courts of this State. The methods of service described in subsections (B) and (C) may be used as alternatives to the method of service described in this subsection.

(B) When no person can be found in possession of the premises, and the premises have remained abandoned, as defined in Section 27-40-730 for residential rental agreements and in Section 27-35-150 for nonresidential rental agreements, for a period of fifteen days or more immediately before the date of service, the copy of the rule may be served by leaving it affixed to the most conspicuous part of the premises.

(C) When service as provided in subsection (A) has been attempted unsuccessfully two times in the manner described in item (1), a copy of the rule may be served by affixing both it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in item (2):

(1) Each of the two attempts to serve the defendant must be separated by a minimum of forty-eight

hours and must occur at times of day separated by a minimum of eight hours. The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the premises.

(2) For mailing by ordinary mail to be considered to complete service under this item, it must be accomplished by placing a copy of the rule and documentation of the prior attempts at service in an envelope in the presence of the clerk of the magistrates court. The clerk is responsible for verifying that the envelope is addressed to the defendant at the address shown in the rule as the rental premises of the defendant or another address for receipt of mail furnished in writing by the tenant to the landlord, that the envelope contains the necessary documents, and that the clerk has placed the sealed and stamped envelope in the United States mail. The clerk's verification must be made a part of the record in the case, and service by ordinary mail is not considered complete without the clerk's verification. A fee as provided for in Section 8-21-1010(14) must be collected by the magistrate or his clerk for the verification and mailing in this item.

(3) Mailing of the rule constitutes service when the requirements of items (1) and (2) have been met and ten days have elapsed from the time of mailing. If these requirements have been met, the specified time period for the tenant to show cause why he should not be ejected as provided in Section 27-37-20 begins to run on the eleventh day after mailing. However, if the tenant contacts the magistrates court prior to the eleventh day, the specified time period for the tenant to show cause as provided in Section 27-37-20 must begin to run at the time of contact.

Service was not perfected during the serving of the rule. Appellant attempted to tell the magistrate, but the magistrate asked the appellant to not interrupt her anymore. The appellant resides at the property; therefore, the property is not abandoned. The appellant has a ring doorbell that alarms when someone is in proximity of the door. The constable did not come out a first time, make attempt again with in 48 hours, nor did mailing of the copy come to the residence. The constable came out one

time only and was captured by the ring doorbell on January 19, 2021, affixing the rule to the door. No knock or attempt was made to connect with or serve the rule. The premises for allowing a notice to be posted on the rental premises belies the assumption that the tenant continues to maintain possession of the premises as such notice would apply in an in rem action as a substitute for an in personam action requiring personal service. See *Greene*, 456 U.S. at 449-456 (dismissing the difference between in rem and in personam actions as relevant to determine the constitutionality of the notice in question). In *Greene*, the notice concerning the ejectment was posted on the door of the rental premises in a neighborhood where kids often pulled the notices down thereby tenants often would not receive notice of the ejectment proceedings. *Id.* at 445-49. This issue was a known issue under the circumstances with the officer routinely serving notice in the area. *Id.* at 454-55. The Court found that under certain circumstances, posting a notice for ejectment proceedings to the door of the rental premises would not serve as adequate notice when feasible and customary alternatives or supplements to provide notice exist such as personal service: But whatever the efficacy of posting [notice] in many cases, it is clear that, in the circumstances of this case, merely posting notice on a door does not satisfy minimum standards of due process. In a significant number of instances, reliance on posting pursuant to the provisions of [S.C. Code Ann. § 27-37-30] results in a failure to provide actual notice to the tenant concerned. The rule affixed to the door had a date of 1-31-2022 to contact the magistrate court. This would be improper service.

The appellant moves that this court will award the appellant with the following relief:

1. The Court set bond at **\$1,695.00** a month until after a judge or jury or through ADR determines what is accurately owed. In accordance with **SECTION 27-40-800**. Undertaking on appeal and order staying execution, ***If tenant fails to make any rental payment within five days of the due date, upon application of the landlord, the stay of execution shall dissolve, the appeal by the tenant to the circuit court on issues dealing with possession must be dismissed and the sheriff may dispossess the tenant.***
2. the Court to dismiss the eviction proceeding in its entirety until after the complaint investigation with the SC Human Affairs Commission is completed and findings are announced.
3. The Court grant the Tenant declaratory relief on whether rent can be defined as including attorney fees and utilities thus be used to declare non-payment of rent for purposes of eviction
4. The Court grant the Tenant declaratory relief on whether attorney fees are owed to AH4R for the eviction proceeding that they took down in October.
5. The Court grant such other and further relief as the Court deems just and proper.