

**RECEIVED**

**Apr 28 2022**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas**

**The Honorable Roger M. Young, Circuit Court Judge**

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**Case No. 2020-CP-08-00718**

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Bethany Aloha Rich,

Appellant,

v.

New Heights Property Management,

Respondent.

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**RECORD ON APPEAL**

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Charleston, SC 29401  
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*Attorney for Appellant*

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2020-CP-08-00718
	)	
Bethany Aloha Rich,	)	<b>ORDER ON APPEAL</b>
	)	
Appellant-Defendant,	)	On appeal from 2020-CV-08-
	)	10600651 (Goose Creek
vs.	)	Magistrate)
	)	
New Heights Property Management,	)	
	)	
Appellee-Plaintiff.	)	
<hr/>		

This appeal of an order of eviction was heard virtually via WebEx on October 20, 2020. Robert Darby argued on behalf of the appellant. Scott Riddell argued on behalf of the respondent. The two issues on appeal are: 1) Did the magistrate err by not dismissing the matter pursuant to the parties' agreement? and 2) Did the magistrate err by concluding that the Plaintiff provided proper notice prior to filing for ejection/eviction?

**STANDARD OF REVIEW**

“Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.” S.C. Code Ann. 18-7-170; see, e.g., Bowers v. Thomas, 644 S.E.2d 751, 753, 373 S.C. 240 (Ct. App. 2007) (affirmance of order of residential eviction, quoting S.C. Code Ann. 18-7-170). “Sections 18-7-140 and 18-7-170 give the Circuit Judge sitting in an appellate capacity the ability to make a determination in the same manner as Circuit Courts in trials without a jury and to reverse a judgment for errors of fact even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses.”

Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 234, 312 S.E.2d 20, 21 (Ct. App. 1984).

### FACTS

On or about December 10, 2018, Appellant entered into a lease with Joseph and Denise Pastre (“Owners”), through their agent, New Heights Property Management (“Respondent”) to live at 169 Decatur Drive in Summerville, South Carolina (the “Premises”); the lease reflected an end date of December 9, 2019, and it contained a provision that either party could terminate the lease “at the end of the initial term with thirty (30) days written notice.” R. at 15. On December 23, 2019, the parties entered into an addendum to the original lease to amend the rental rate moving forward and to formally extend the initial lease term to January 31, 2020; the addendum otherwise incorporated the lease’s terms including that regarding the 30 days’ written notice. R. at 14. On February 3, 2020, after having learned that appellant had not yet moved out of the Premises, Respondent filed an Application for Ejectment. R. at 12.

During both the addendum’s term and into February of 2020, appellant communicated by phone calls and texts with the owners’ real estate agent about both purchasing the home and dismissing the eviction proceeding after the initial filing had occurred. In text messages to Appellant on February 14 and 15, 2020, Owners’ real estate agent, Barbara Daniels, stated with regard to the eviction: “Seller said as soon as we have paperwork, she will stop it[.]” In response, Appellant asked: “What paperwork are they looking for[?] Last we spoke it was a preapproval letter.” Daniels replied, “Yes. That’s what I need[.]” Ms. Daniels testified that she intended “paperwork” to mean a ratified contract and not just a preapproval letter and that the preapproval letter that had been provided by Appellant was insufficient in any event because it did not include

a dollar amount. Transcript at 11:53:33-11:57:43.<sup>1</sup> Appellant testified that she understood this paperwork-requirement to mean only providing a pre-approval letter. Transcript at 11:52:40-11:53:02.

### **ARGUMENTS ON APPEAL**

Counsel for the appellant argued that the lease obligated the respondent to give the appellant 30 days' written notice before filing for eviction, such that the respondent lacked the right to file for eviction on February 3, 2020. Counsel also argued that the parties had entered into a binding contract to dismiss the eviction, on account of the phone calls and text communications described above.

Counsel for the respondent argued that notwithstanding the lease's 30 day notice provision, the respondent had, under state statute, the right to file for eviction when it did. Counsel also argued that the phone calls and text messages regarding dismissing the eviction proceedings did not amount to a binding contract, and to that respondent retained the right to pursue eviction proceedings in full.

### **CONCLUSIONS OF LAW**

Appellant's tenancy ended on January 31, 2020 as stated in the addendum, and the respondent had the right on February 3, 2020 to file for eviction. See S.C. Code Ann. § 27-35-110 ("When there is an express agreement, either oral or written, as to the term of the tenancy of a tenant for term or for years such tenancy shall end without notice upon the last day of the agreed term."). On February 1, 2020, when appellant still had not moved out, she became a holdover tenant, and the respondent demonstrated its lack of consent to appellant's continued occupancy

---

<sup>1</sup> References to the audio recording of the transcript are in clock-time designations, as the .trm files reflect the actual clock-time of the lower court's hearing ("HH:MM:SS").

when it filed for eviction on February 3, 2020. See S.C. Code Ann. § 27-40-770(c) (“If the tenant remains in possession without the landlord’s consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. . . .”).

The phone calls and texts between the appellant and the owner’s real estate agent did not create a binding contract to dismiss the eviction because there was no meeting of the minds about what home-purchase paperwork the appellant had to provide as a condition precedent. See, e.g., Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (“South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.”).

#### JUDGMENT

The court finds no error in the magistrate’s decision and AFFIRMS the judgment upholding the eviction. Per S.C. Code Ann. Sec. 27-40-800(f)(1). The court orders that the writ of ejectment may not be executed prior to December 1, 2020, as Appellant has paid rent for the month of November pursuant the magistrate’s bond order dated March 17, 2020. Additionally, if Appellant pays \$1,600 to Respondent no later than December 1, 2020, the writ of ejectment shall not be executed prior to January 1, 2021, giving Appellant 30 days to file a timely appeal of this order in the Court of Appeals (as provided by Rule 203(b)(1), SCACR)<sup>2</sup>, should she choose to do so.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

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<sup>2</sup>A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.” Rule 203(b)(1), SCACR.



**Berkeley Common Pleas**

**Case Caption:** Bethany Aloha Rich VS New Heights Property Mgmt  
**Case Number:** 2020CP0800718  
**Type:** Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2020-11-16 14:14:01 page 5 of 5

ELECTRONICALLY FILED - 2020 Nov 16 3:05 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800718

# Appeal Transmittal

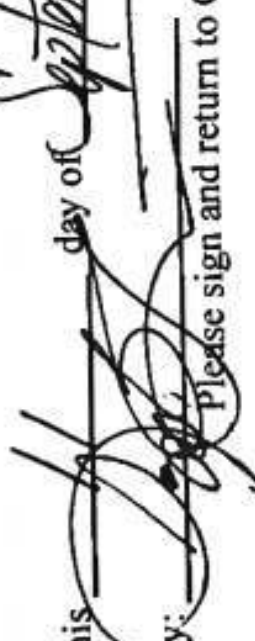
Date: 9/3/2020

Goose Creek Magistrate  
303-B N. Goose Creek Blvd.  
Goose Creek, SC 29445  
843-553-7080

From: Connie Mills

Name	Case Number	Documents being transmitted
Bethany Aloha Rich vs. New Heights Property Management	2020CV0810600651 2020CP0800718	Civil Sheet, Form 4, Notice of Motion, Judges Notes, Application for Ejectment Pleadings, Rule to Vacate or Show Cause (Eviction), Writ of Ejectment, Show Cause Hearing Request Form, Tenant Exhibit # 1, Appeal, Bond-to-Stay, Magistrate's Return, 2 CD for court on 3/11/20 and 3/17/20

Received this 3rd day of September 2020

Received by:  Please sign and return to Goose Creek Magistrate. **CLERK OF COURT GOOSE CREEK COUNTY, SC**

20 SEP 11 PM 1:01  




**Civil Case Number:** 2020CV0810600651

**Caption of Case:** New Heights Property Management (Plaintiff)

vs.

Bethany Aloha Rich (Defendant)

**Eviction taken Out:** February 3, 2020

**Eviction Served:** Eviction was posted twice

- February 4, 2020 @ 17:16PM
- February 6, 2020 @ 15.34PM

**Tenant Requested Hearing:** February 20, 2020

**Show Cause Hearing Date:** March 11, 2020

- Eviction was upheld

**Show Cause Hearing Judge:** Magistrate Ellen L. Karesh

**Writ of Ejectment Issued:** March 11, 2020 @ 11:00AM

**Writ of Ejectment Served:** March 16, 2020 @ 19:31PM

**Appeal Filed:** March 13, 2020

**Bond-to-Stay Hearing:** March 17, 2020 @ 10:00AM

**Bond-to-Stay Hearing Judge:** Magistrate Ellen L. Karesh

**Magistrate's Return Issued:** June 3, 2020

**Plaintiff's Attorney:** Judith Wolk

**Defendant's Attorney:** Robert Darby

**Witnesses:**

- Barbara Daniels, Realtor
- Nicki Bennett, Property Manager
- Bethany Rich, tenant

RECEIVED  
CLERK OF COURT  
BERKELEY COUNTY, SC

20 SEP 11 PM 1:01

FILED

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0800718

Bethany Aloha Rich  
PLAINTIFF(S)

New Heights Property Mgmt  
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Magistrate Court is to provide a certified record to the Common Pleas Clerk of Court. The Magistrate Court need not have the audio transcribed but is to provide the audio itself, along with pleadings and exhibits.

ORDER INFORMATION

This order  ends  does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/03/2020.

Magistrate Court Goose Creek  
New Heights Property Mgmt for New Heights Property Mgmt  
New Heights Property Mgmt for New Heights Property Mgmt

FILED  
SEP 03 2020  
Goose Creek  
Magistrate Court

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Copy of Form 4

ELECTRONICALLY FILED - 2020 Sep 03 11:41 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0800718

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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**Berkeley Common Pleas**

**Case Caption:** Bethany Aloha Rich VS New Heights Property Mgmt  
**Case Number:** 2020CP0800718  
**Type:** Order/Electronic Form 4

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2020-09-03 10:23:46 page 3 of 3

ELECTRONICALLY FILED - 2020 Sep 03 11:41 AM - BERKELEY - COMMON PLEAS - CASE#2020CP0800718

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS OF
COUNTY OF BERKELEY	)	THE NINTH JUDICIAL CIRCUIT
	)	Case No: 2020-CP-08-00718
BETHANY RICH,	)	
	)	NOTICE OF MOTION AND
APPELLANT	)	MOTION TO COMPEL
	)	TRANSMITTAL OF CERTIFIED
	)	RECORD AND TO STAY
	)	
VS.	)	
	)	
NEW HEIGHTS PROPERTY MANAGEMENT,	)	
	)	
RESPONDENT	)	

MOTION FILED

PLEASE TAKE NOTICE that Appellant Bethany Rich, by and through her undersigned counsel, will move before this Court as soon as counsel may be heard for an order compelling the Goose Creek Magistrate Court to transmit a certified record to this Court pursuant to Rule 75 of the South Carolina Rules of Civil Procedure and Rule 18 of the South Carolina Rules of Magistrate Court, and for an order staying this appeal matter (or in the alternative, for a continuance of the hearing scheduled for August 24, 2020) until that certified record has been transmitted.

**Factual and Procedural Background**

Appellant Bethany Rich ("Appellant") signed a lease with Respondent New Heights Property Management to live at 169 Decatur Drive in Summerville, SC for an initial lease term of December 10, 2018 to December 9, 2019, which was then extended by an addendum. The parties disagree on whether proper notice was given prior to filing, but, on February 3, 2020, Respondent filed an application for ejectment with the Goose Creek Magistrate Court (Case Number 2020CV0810600651).

After a hearing on March 11, 2020 in which multiple witnesses testified, Magistrate Judge Ellen Karesh ruled that Appellant did not show cause why a writ of ejectment should not be issued.

AUG 18 2020  
Goose Creek  
Magistrate Office

Appellant filed a notice of appeal to this Court on March 13, 2020. On March 17th, Judge Karesh held a hearing and ordered Appellant to pay an undertaking/bond to stay execution of the writ of ejectment during the pendency of the appeal. On June 4, 2020, a Magistrate's Return was filed with this Court, along with a copy of the Bond to Stay Execution on Appeal. The Magistrate's Return is a single page and summarizes the procedural history of the case and the terms of the undertaking/bond. The Magistrate's Return does not mention any of the witnesses that testified, does not discuss the substance of any witness testimony, does not attach a transcript of the hearing, does not provide any exhibits, and does not include the pleadings that were filed in the case.

On August 13, 2020, Appellant received an e-mail indicating an appeal hearing had been published to the Berkeley County Website. The court roster for appeal hearings currently reflects that this matter is scheduled to be heard by the Honorable Richard M. Young, Sr. at 2:30 p.m. on August 24, 2020.

**The Magistrate Court Has Not Transmitted a Certified Record as Required by Rule 75**

Rule 75 of the South Carolina Rules of Civil Procedure ("Rule 75") is titled "Record on Appeal to the Circuit Court: Transmittal" and states in its entirety:

Appeals to the circuit court shall be made upon the original record in the lower court or administrative agency or tribunal. Upon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court or administrative agency or tribunal and transmitted within thirty (30) days to the clerk of the court to which the appeal is taken. If the lower court, agency or tribunal has no clerk, then the original record shall be certified and transmitted by the judge or chief official of the lower court, agency or tribunal. Upon motion for good cause shown, the court may extend the time for the lower court, agency or tribunal to prepare and certify the record. Upon receipt of the certified record, the clerk of the circuit court shall give notice in writing to the parties that the record has been filed.

(emphasis added). To date the only thing that has been transmitted from the lower court to the Circuit Court is the Magistrate's Return and a copy of the Bond to Stay Execution on Appeal. It

does not appear that either of these documents bears a certification, and these documents do not constitute the record of the case that must be transmitted pursuant to Rule 75.

Other procedural rules make clear that the record on appeal from a lower court should include more than what has been transmitted here. Rule 18 of the South Carolina Rules of Magistrate Court is titled "Appeals" and clarifies that the magistrate's return and case record are two separate items to be transmitted. It reads: "the magistrate shall file the return to the notice of appeal with the Clerk of the Circuit Court . . . together with the record, a statement of all proceedings in the case, and, if necessary, the testimony taken at trial." Furthermore, Rules 209 and 210 of the South Carolina Appellate Court Rules address the content of the record when appealing to that court. While the Appellate Court Rules are not directly applicable, both Rules 209 and 210 list the following items as being appropriate content for the record on appeal: transcript, pleadings, orders, and exhibits. No transcript, pleadings, or exhibits have been transmitted to this Court to date.

The applicable South Carolina statutes also require that the record on appeal to the Circuit Court include more than what has been filed here. Chapter 7 of Title 18 of the South Carolina Code of Laws addresses the procedure for appeals to the Circuit Court from Magistrate Court. Section 18-7-130 is titled "Hearing on Appeal" and states: "[t]he appeal shall be heard by the court upon all the papers in the case, including the testimony on the trial . . . and the grounds of exception made without examination of witnesses in court." Furthermore, Section 18-7-170 is titled "Judgment on appeal" and states that "the [Circuit Court] may affirm or reverse the judgement of the court below . . . for errors of law or fact." It would be virtually impossible for the Circuit Court to conclude the lower court had made an error of fact as is contemplated in 18-7-170 without a transcript, exhibits or even a summary of the witness testimony from the lower court, especially given that Section 18-7-130 prevents examination of witnesses at the hearing on appeal.

Accordingly, pursuant to Rule 75 the lower court is responsible for transmitting the record to the Circuit Court, and any reasonable interpretation of the term "record" in Rule 75 would include the pleadings, testimony and exhibits from the lower court. Therefore, for the reasons discussed above, Appellant respectfully requests that this Court enter an order:

1. Compelling the Goose Creek Magistrate Court to transmit a certified record for Case No. 2020CV0810600651, including the pleadings, testimony and exhibits; and
2. Staying this matter until such time as a certified record from the lower court has been filed.

Rule 11 Certification: Appellant's undersigned counsel prior to filing this motion has communicated with opposing counsel and has attempted in good faith to resolve the matter contained in this motion.

Dated: August 19, 2020

Respectfully submitted by:

/s/ Robert Darby

Robert Darby  
Charleston Legal Access  
3775 Spruill Ave, Suite B  
North Charleston, SC 29405  
843-640-5980 ext. 709  
rob@charlestonlegalaccess.org

*Attorney for Appellant*

Rent paid for:

Judges Notes

Jan 2020	Yes	
Feb 2020	No	Leslie's Request
March 2020	No	

Text message about A Tenant + Leslie  
Barbara + Dimech

Does tenant have sent money for Feb + March -  
Yes -

No oral contract established -

Communication was with Leslie only -  
Nicholas is waiting to extend the lease.  
Leslie has drop down date -

Evidence was filed prior to text message exchange -  
Text message exchange was negotiation to dismiss  
eviction <sup>eviction</sup> + intent to purchase lease No  
contract. No agreement to purchase.

Elements of contract have not been signed.

$$\begin{array}{r} 3200 \\ \underline{500} \end{array} \quad + 165 + 160$$

\$5565.00



X

# CHECKLIST FOR EVICTION

## COURT USE ONLY

1. Is there a lease? ~~xx~~ Yes \_\_\_ No
2. Is the lease oral or written? \_\_\_ oral ~~xx~~ written
3. Is there a lease violation other than nonpayment of rent?  Yes \_\_\_ No  
(If lease violation, attach lease to paperwork)
4. Is the property that is rented a ~~xx~~ House or a \_\_\_ Mobile Home
5. If it is a Mobile Home, is the Mobile Home Leased? \_\_\_ Yes \_\_\_ No
6. If it is a Mobile Home, is the Lot just Leased? \_\_\_ Yes \_\_\_ No
7. Do you own the Mobile Home? \_\_\_ Yes \_\_\_ No
8. Have any down payments on the Mobile Home been made? \_\_\_ Yes \_\_\_ No
9. If so, how much down payment was placed? \_\_\_\_\_
10. Is this a rent to own or is the person buying the home? NO
11. How much is the rent per month? \$ 1000
12. What day is the rent due? First of Month
13. How much are the late fees? \$ \_\_\_\_\_
14. What is the total amount due? 307.44

Landlord Signature: Judith B. Wolk

Clerk's Signature: Valita Fisher

**NEW HEIGHTS PROPERTY MANAGEMENT LEASE ADDENDUM**

This Lease Addendum made at Summerville, South Carolina, dated 12/23/2019, between:


Bethany Aloha Rich

(hereinafter called "TENANT"), and New Heights Property Management (hereinafter called "LANDLORD"), for the property located at:

169 Decatur Dr, Summerville, SC 29486-5333

This addendum shall be attached and considered a part of the lease and supercede any portions of the lease terms contained herein:

**TERMS:** owner agrees to Dec rent rate and Jan rent rate with \$100 additional rent, tenant is to vacate by 1/31/2020 and keys turned in by 5pm 1/31/20. December rent is to be current by close of business 12/20/19

<fullName>	<signature>	<date>	Bethany Rich		12/23/2019
<fullName>	<signature>	<date>			
<fullName>	<signature>	<date>			
<fullName>	<signature>	<date>			
<fullName>	<signature>	<date>			
<fullName>	<signature>	<date>			

**NEW HEIGHTS PROPERTY MANAGEMENT RESIDENTIAL RENTAL AGREEMENT**

This Rental Agreement made at Summerville, South Carolina, dated 12/10/2018, between:

**Bothany Aloha Rich**

(hereinafter called "TENANT"), Joseph and Denise Pasaro (hereinafter called "LANDLORD"), by his agent, New Heights Property Management (hereinafter called "AGENT") for the property located at:

169 Decatur Dr, Summerville, SC 29486-5333

**THE [ X ] AGENT | | TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.**

- 1. **LANDLORD TENANT ACT:** This Rental Agreement is governed by the South Carolina Residential Landlord and Tenant Act.
- 2. **LOCATION:** The Landlord hereby rents to the Tenant and the Tenant hereby rents from the Landlord a parcel of property located in the County of Berkeley County, State of South Carolina, which parcel of land with improvements will constitute the premises. Said parcel of land is more particularly described as follows:

169 Decatur Dr, Summerville, SC 29486-5333

3. **TERMS:** This Rental Agreement shall commence on the 12/10/2018, and end on 12/09/2019 at 12:00 Midnight. Tenant covenants that upon the termination of this Rental Agreement, or any extension thereof that the Tenant will quietly and peaceably deliver possession of the premises in good order and condition, reasonable wear and tear expected, free of Tenant's personal property, garbage and other waste, and return all keys to the Landlord. Should any extension of the lease or previous renewal be negotiated, the tenant will be charged a \$30.00 lease renewal fee.

If the Tenant remains in possession without the Landlord's consent after the expiration of the term of the rental agreement, or its termination, the Tenant will be responsible to pay two (2) times the daily rate listed in Paragraph 4 for each day until possession is relinquished to the Landlord.

4. **RENT:** Tenant agrees to pay Landlord a total rent of \$18,000.00. Said rent shall be payable in monthly installments of \$1,500.00, on or before the first day of every month during said term. The rent is payable to New Heights Property Management at 237 Old Summerville Road Suite F, Summerville, SC 29483 or as Tenant may be advised from time to time in writing. Where the term of the Rental Agreement commences or terminates on a day other than the first day of the month, Tenant shall pay rent unto the Landlord in the amount of the daily rental rate based on the current calendar month. Once Tenant provides a move-out date to the Landlord in keeping with the termination provisions contained herein, Tenant shall pay two (2) times the daily rate for any day or days they occupy the premises past the move-out date they provide to the Landlord.

**NOTICE TO TENANT: IF TENANT DOES NOT PAY RENT WITHIN FIVE (5) DAYS OF THE DUE DATE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTES WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.**

Tenant further understands that if there are any outstanding charges on the Tenant's account with Landlord, any monies received will be applied to the oldest outstanding charges first.

 | | | | | TENANTS AND |  AGENT HAVE READ THIS PAGE. 7, 8, 5,

\* EACH TENANT MUST SIGN AND DATE BELOW AND FILL OUT PHONE/EMAIL.

TENANT 1: Brian Rich TENANT 2: \_\_\_\_\_  
Phone: 509-818-0396 Phone: \_\_\_\_\_  
E-mail: brianrich123@gmail.com E-mail: \_\_\_\_\_  
Date: 12/10/2018 Date: \_\_\_\_\_

TENANT 3: \_\_\_\_\_ TENANT 4: \_\_\_\_\_  
Phone: \_\_\_\_\_ Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

AGENT: Jana Richard  
Date: 12/10/18

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )

2020CV0810600651 ✓  
CIVIL CASE NUMBER  
MAGISTRATE'S COURT  
RULE TO VACATE OR SHOW CAUSE (EVICTION)

New Heights Property Management  
21 A Gamecock Ave  
Charleston, SC 29407

Phone: (843) 737-0173

PLAINTIFF(S)

Vs  
Bethany Aloha Rich  
169 Decatur Dr  
Summerville, SC 29486

Phone:

DEFENDANT(S)

TO Bethany Aloha Rich : New Heights Property Management is asking this Court to evict you from the property located at because they claim that:

- You have failed to pay rent when due or demanded in the amount of \$306.44.
- The terms of your tenancy or occupancy have ended.
- You have violated the terms or conditions of your lease by:

You the defendant(s) and lessee(s) of the premises listed at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 OR contact the:

Goose Creek Magistrate  
303-B North Goose Creek Blvd.  
Goose Creek, SC 29445  
(843) 553-7080

within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

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

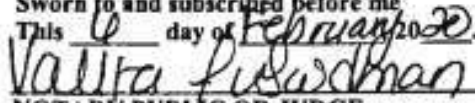
02/03/2020

  
\_\_\_\_\_  
Judge, Goose Creek Magistrate

Personally appeared before me, the undersigned deponent, being duly sworn, says s/he is a person over 18 years of age, not a party or attorney in this action and s/he to serve the Rule to Vacate or Show Cause on Bethany Aloha Rich on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. 02-04	17:16	HL	_____	_____
2. 02-06	15:34	HL	_____	_____

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT
3. _____

Sworn to and subscribed before me  
This 6 day of February 2020.  
  
NOTARY PUBLIC OR JUDGE

  
SIGNATURE OF SERVER

ON 2/12/20 I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

  
MAGISTRATE'S CLERK

C

EVICTION SERVICE

WARRANT OF  
EJECTMENT SERVED

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )  
New Heights Property Mgmt )  
214 Commercial Blvd )  
Charleston, SC 29407 )

Plaintiff / Landlord )

vs. Bethany Rich )  
1169 Decatur Drive )  
Summerville SC 29156 )

Defendant / Tenant )

IN THE MAGISTRATE'S COURT

CASE NUMBER: 2022 CV 812662

Request for a Show Cause  
Hearing

I, Bethany Rich, the above named defendant/tenant located at  
(Property address) 1169 Decatur Drive, in the County of  
Berkeley, do hereby request a hearing for the following reason(s):

~~Eviction notice served~~  
eviction dispute

I am being evicted on the grounds of: "the terms of your tenancy  
or occupancy have ended"

Respectfully submitted this 20th day of February 2022.

Bethany Rich  
Signed by Tenant

(843) 693-6737  
Phone Number of Tenant

bethanyaloha@gmail.com  
Email Address

I was personally served Yes No Date

I removed the notice off of the door Yes No Date

Court Date: 3/2/20 At (time) 1:00pm  
Notified Landlord on 2/20/20

Notes: \_\_\_\_\_

**QUESTIONS PERTAINING TO THE SHOW CAUSE  
HEARING REQUEST**

1. Do you have a lease?  yes \_\_\_\_\_ no

2. Is it oral or written? written

3. What are the terms of the lease?(date)

~ Dec 9, 2018 - Dec 9, 2019 extended to Jan 3, 2020

4. Is your rent paid up to date?  yes \_\_\_\_\_ no

5. Was the eviction filed illegal?  yes \_\_\_\_\_ no

6. If so, how?

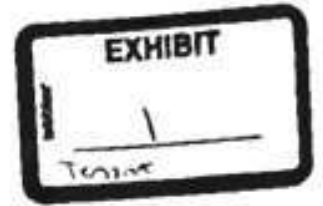
~ No written ~~30~~ 30 day notice  
~ tried to pay rent - it was refused  
~ Negotiating to purchase the property  
~ 48 hour notice time was not done properly  
~ unclear on due process

7. What do you want the judge to do for you?

~ Remove charges from New Heights  
since Feb 1, 2020  
if ~~the~~ charges occurred

~ find that because the daily rate is unconscionable  
~ disallowing payment of rent and charging  
late fees should be seen as unconscionable  
on New Heights needs to operate in a way that  
allows fair notice

**Note: This office can't give out legal advice.**



Barabra >

Tue, Feb 11, 8:07 AM



Call me to discuss your email please

Tue, Feb 11, 1:39 PM

Jameson can be available to talk around 4:30 today.

Great. Can you send me his number

I would prefer to have a conversation together so that we are all on the same page. There is a



iMessage





Barabara >



I would prefer to have a conversation together so that we are all on the same page. There is a loan in the approval process right now with him as a co-signer.

Do you want to 3 way us

Yes that will work. Does 4:30 work for you?

Yes

Ok.



MESSAGE





Barabra >



Tue, Feb 11, 4:37 PM

Ready when you are?

Call me

Ok would you like me to call you first and then Jameson?

Whatever works

Ok. I'll call him first.

Wed, Feb 12, 7:55 AM



iMessage





Barabra >

Wed, Feb 12, 7:55 AM



Sent you an email regarding our conversation yesterday.

I got it. I spoke with the owners last night and they will wait for their decision depending on the lenders letter

Fri, Feb 14, 11:43 AM

Ok. Did they say if they knew where in the process of eviction they were? I haven't received



iMessage





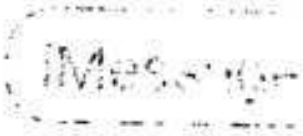
Barabra >

Fri, Feb 14, 11:43 AM



Ok. Did they say if they knew where in the process of eviction they were? I haven't received anything in the mail. So assuming there's still some time. I'm guessing the lender will know today as Jameson had his credit freeze removed which is what was holding this back.

I don't know anything about the eviction.





Barabra >

I don't know anything about the eviction. Seller said as soon as we have paperwork she will stop it

Sat, Feb 15, 11:06 AM

What paperwork are they looking for. Last we spoke it was a preapproval letter.

Yes. That's what I need

Ok.

Delivered



STATE OF SOUTH CAROLINA

COUNTY OF Berkley

Bethany Rich  
Plaintiff(s)

vs.

New Heights Property Management  
Defendant(s)

Submitted By: Bethany Rich

Address: 1169 Decatur Dr.  
Summerville SC 29486

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP- -

2020 CP-08 00718

SC Bar #: \_\_\_\_\_

Telephone #: 843-693-6737

Fax #: \_\_\_\_\_

Other: \_\_\_\_\_

E-mail: Bethanyaloh@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |   |  |  |  |
|---|--|--|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199) _____</li> </ul> <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599) _____</li> </ul> <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699) _____</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Permanent Restraining Order (680)</li> <li><input type="checkbox"/> Interpleader (690)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intest Case #<br/>20 <u>-NI-</u></li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299) _____</li> </ul> <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstatae Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899) _____</li> </ul> | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Slander/Libel (380)</li> <li><input type="checkbox"/> Other (399) _____</li> </ul> <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Incapacitated Adult Settlement (790)</li> <li><input type="checkbox"/> Other (799) _____</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim of Easement (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499) _____</li> </ul> <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input checked="" type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> _____</li> <li><input type="checkbox"/> _____</li> <li><input type="checkbox"/> _____</li> </ul> |
|---|--|--|--|

Submitting Party Signature: Bethany Rich

Date: 03/13/2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

2020 MAR 13 AM 10  
 CLERK OF COURT  
 BERKLEY COUNTY  
 REAL PROPERTY  
 NOTICE OF APPEAL

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

2020-CP-08-00718

Case Number: 2020CV0810600651

March 11, 2020 hearing scheduled for 11am

I, Bethany Rich appeared before the magistrate, Ellen Karesh, with my attorney Robert Darby. New Heights Property Management (NHPM) represented by Nickie Bennet and their attorney Judy Wolk appeared. There was another attorney there.

The property owners Joseph and Denise Pastre were present.


I took the stand. Then NHPM attorney Judy Wolk called Barbra Daniles to the stand. She is the owners realtor. After Nickie Bennet from NHPM was called to the stand. The owners were present but were not called to the stand.

I was not informed that any witness could be called. I would have had my realtor and company appear.

I would ask to appeal the result of this eviction hearing for the following reasons and any others that the circuit court may find to support my cause:

- The Magistrate erred by not dismissing the matter pursuant to the parties' agreement.
- The Magistrate erred in concluding that the Plaintiff provided proper notice prior to filing for ejection/eviction.

Sincerely,

  
 \_\_\_\_\_  
 Bethany Rich  
 843-693-6737

March 12, 2020

2020 MAR 13 AM 10:33  
 LEAH GUERREY  
 CLERK OF COURT  
 BERKLEY COUNTY, SC  
 HRL  
 -11-11-

I would like to receive notice by mail to 169 Decatur Drive Summerville, SC 29486

STATE OF SOUTH CAROLINA )  
 )  
 )  
COUNTY OF BERKELEY )  
 )  
 )  
 )

2020CV0810600651  
CIVIL CASE NUMBER  
MAGISTRATE'S COURT

**BOND TO STAY EXECUTION  
ON APPEAL**

**New Heights Property Management**  
21 A Gamecock Ave  
Charleston, SC 29407  
(843) 737-0173

**LANDLORD**

Vs

**Bethany Aloha Rich**  
169 Decatur Dr  
Summerville, SC 29486

**TENANT(S)**

TO: Circuit Court

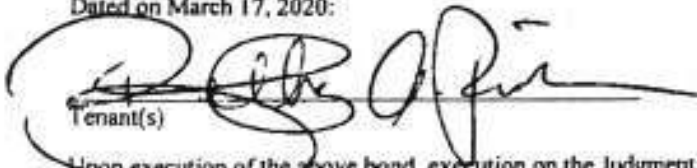
Now comes the Tenant(s) in the above entitled action and respectfully shows the Court that a Judgment of Execution was issued against the Tenant(s) and for the Landlord on **March 11, 2020**, by the Magistrate. Tenant(s) has appealed the Judgment to the Circuit Court.

Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay rent in the amount of **\$1,600.00 per month, due on the 1st day of each month.**

Tenant(s) hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the Court and moves the Circuit Court to stay execution on the Judgment for Ejectment until this matter is heard on appeal and decided by the Circuit Court.

**BOND: \$5,565.00 due within 5 days of today's date. Rent in the amount of \$1,600.00 is due on the 1st day of the month and late after the 5th day of the month. All monies are due via certified funds until the appeal is resolved. All litigants must comply with the Bond-to-Stay until the appeal is resolved.**

Dated on March 17, 2020:

  
Tenant(s)

Upon execution of the above bond, execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If Tenant(s) 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(s) to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant(s).

Dated on March 17, 2020

  
\_\_\_\_\_  
JUDGE

Goose Creek Magistrate  
303-B North Goose Creek Blvd.  
Goose Creek, SC 29445  
Phone: (843) 553-7080  
Fax: (843) 553-7074

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Bethany A. Rich,  
Plaintiff (Tenant)

vs.

New Heights Property Management,  
Defendant (Landlord)

) IN THE MAGISTRATE'S COURT  
) CASE NO: 2020CV0810600651  
) CIVIL CASE NO.: 2020-CP-08-00718

)  
)  
)  
) **MAGISTRATE'S RETURN**  
)  
)  
)


This matter is on appeal from the Magistrate Court of Berkeley County, presiding judge, the Honorable Ellen L. Karesh.

New Heights Property Management filed a Rule to Vacate or Show Cause (Eviction) on February 3, 2020. The Rule to Vacate or Show Cause (Eviction) was signed by the Honorable Ellen L. Karesh. Bethany Rich was being evicted for the terms of tenancy or occupancy had ended.

A Show Cause Hearing was requested by Bethany Rich. The Show Cause Hearing was heard on March 11, 2020. Bethany Rich appeared along with her Attorney Robert Darby. New Heights Property Management was represented by Attorney Judith Wolk. After all testimony was given, the Eviction was upheld by the Honorable Ellen L. Karesh for the terms of tenancy or occupancy had ended. New Heights Property Management filed the Writ of Ejectment on March 11, 2020 and it was signed by the Honorable Ellen L. Karesh. It was served on March 16, 2020 at 7:31PM. Bethany Rich filed an appeal on March 13, 2020. The Bond-to-Stay hearing was scheduled for May 17, 2020. The Bond-to-Stay Hearing was heard by the Honorable Ellen L. Karesh. Below is the outcome from the Bond-to-Stay hearing.

1. \$5,565.00 must be paid within 5 days (March 24, 2020 before 5:00PM) of the Bond-to-Stay hearing or the appeal could be dismissed.
2. Rent in the amount of \$1,600.00 is due on the 1<sup>st</sup> day of each month and late after the 5<sup>th</sup> of the month.
3. All monies must be paid by certified funds until the appeal is resolved.
4. All parties should adhere to the Bond-to-Stay until the appeal is resolved.

Dated this 29<sup>th</sup> day of May, 2020  
Goose Creek, SC

  
\_\_\_\_\_  
Judge Ellen L. Karesh, Magistrate  
303-B North Goose Creek Blvd.  
Goose Creek, SC 29445  
843-553-7080 / 843-553-7074 (fax)

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF BERKELEY ) CASE NO. 2018-CP-08-00718

3  
4 BETHANY RICH, )  
5 Plaintiff, ) Transcript of Record  
6 vs. )  
7 NEW HEIGHTS PROPERTY ) Date: October 20, 2020  
8 MANAGEMENT, )  
9 Defendant. )

9 \* \* \* \* \*

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B E F O R E:  
The Honorable Roger Young

\* \* \* \* \*

Denise J. Lauder, RPR  
Ninth Judicial Circuit

## A P P E A R A N C E S

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REPRESENTING THE PLAINTIFF:

ROBERT ATKINSON DARBY, III, ESQUIRE

3775 Spruill Ave, Suite B

North Charleston, SC 29405

REPRESENTING THE DEFENDANT:

SCOTT PARKER RIDDELL, ESQUIRE

Provence Messervy, LLC

504 W 5th North St

Summerville, SC, 29483-6105

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INDEX

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INDEX OF EXHIBITS

(No exhibits were offered or  
marked for identification.)

1                   (The following proceedings were held  
2 via Webex videoconference platform, 10/20/2020,  
3 Berkeley County Common Pleas, Judge Young, 4:02  
4 p.m.)

5                   THE COURT: This is Bethany Rich v. New  
6 Heights Property Management, 2020-CP-08-00718.  
7 It's an appeal for the magistrate's court. So  
8 Ms. Rich is the appellant.

9                   Mr. Darby, that's your client. You get  
10 to go first.

11                  MR. DARBY: Thank you, Your Honor, and  
12 may it please the Court.

13                  The magistrate made two errors in this  
14 case, as we detailed in our brief and as were laid  
15 out in the notice of the appeal. Those two errors  
16 are, first, by concluding that the respondent New  
17 Heights Property Management had provided sufficient  
18 notice prior to filing the eviction and, second, by  
19 refusing to enforce the settlement agreement.

20                  If this Court agrees that either of  
21 those errors were made, then it should reverse the  
22 magistrate, because it had to reach both of those  
23 conclusions to grant the writ of ejectment.

24                  I'm going to address each of those  
25 issues in turn and provide a little bit of the

1 factual background that relate to each issue prior  
2 to that.

3           So the first issue is whether or not  
4 respondent provided the requisite notice prior to  
5 filing the eviction. And so, again, the factual  
6 background here starts in December of 2018. That's  
7 when Ms. Rich signed her lease agreement. That  
8 lease was for one year and with an end date of  
9 December 2019.

10           Paragraph 14 of that lease agreement  
11 states, either party may terminate this rental  
12 agreement at the end of the initial term with  
13 thirty days written notice. The clear implication  
14 to that paragraph 14 is that if no notice was  
15 provided, then the lease would not be terminated.  
16 It would continue on month to month.

17           In, approximately, August of 2019, so  
18 about nine months into the tenancy, the owners of  
19 the property indicated that they wanted to sell the  
20 property, and so they were not going to be renewing  
21 the lease for an additional year, but Ms. Rich  
22 discussed with their agent, Ms. Daniels, that she  
23 was interested in purchasing the property and,  
24 also, discussed living there while it was listed  
25 for sale and while she was negotiating that

1 purchase on a month-to-month basis.

2 So in December of 2019, when the  
3 original lease term ended, or was set to end, she  
4 went to New Heights Property Management and she  
5 paid her rent just like she had done the previous  
6 12 months. They accepted the rent, but then there  
7 was some confusion about what the rental rate  
8 should be. There was language in the lease about  
9 paying, essentially, double the daily rate after  
10 the initial lease term ended.

11 And so Ms. Rich was presented with an  
12 addendum. And that addendum clearly stated it was  
13 considered part of the lease. It clarified what  
14 the rental rate would be going forward that, that  
15 rental rate would be \$100 more. And she signed it  
16 and, therefore, provided an end date of January 31,  
17 2020.

18 But, again, her understanding was she  
19 could live there while she was negotiating the  
20 purchase of the property and while they were  
21 potentially showing it to other people.

22 So then at the end of January 2020, she  
23 was still in negotiation to purchase this property,  
24 and so went to pay her February rent based on this  
25 month-to-month lease that she understood she was

1 living subject to, and they refused to accept the  
2 February rent. And that was a surprise to her.

3 And then they filed an eviction,  
4 February 3rd, without the 30 days written notice  
5 that was required by paragraph 14 of that lease.

6 When presented with those facts, which  
7 are all supported by the record, the magistrate  
8 concluded that the addendum itself was sufficient  
9 30 days notice pursuant to the lease, hence the  
10 law, and issued the writ of ejectment, but that is  
11 inconsistent with the law for a couple of reasons.

12 A lease is a contract, and it's well  
13 settled that contracts should be interpreted to  
14 give effect to all of their provisions. There's a  
15 debate about that tenant contract law. And, again,  
16 paragraph 14 is clear and is a part of that  
17 contract. And it says, to terminate the rental  
18 agreement 30 days notice is required. To hold  
19 otherwise would render 14 -- paragraph 14  
20 completely meaningless.

21 And, again, the addendum provides an  
22 end date. It provides an end date of January 31,  
23 2020, just like the original lease provided an end  
24 date. And it -- and the original lease also  
25 required 30 days notice. So the fact that the

1 addendum has an end date is not itself sufficient  
2 to provide notice termination of the lease.

3           And at best, you might say, okay, well,  
4 it's unclear as to what happened at the end term if  
5 30 days notice is not provided, and it's ambiguous.  
6 And, again, it's a well-established principle of  
7 contract interpretation that to the extent there's  
8 any ambiguity, it is resolved against the  
9 non-drafting party. In this case, the non-drafting  
10 party is my client, Ms. Rich, the appellant.

11           She is not the one that drafted these  
12 agreements. She was presented them by New Heights,  
13 by the respondent. They are a sophisticated  
14 business providing these contracts of adhesion.  
15 She didn't have the ability to negotiate them so,  
16 you know, she took them and understood them for  
17 what they said, which is that she would be given  
18 30 days notice.

19           And so again, at best, it's ambiguous  
20 and that ambiguity should be resolved in favor of  
21 the appellant. So that's another reason that the  
22 magistrate's decision is inconsistent with the law.

23           I do want to address respondent's  
24 arguments from his brief really quickly. The  
25 respondent kind of focused on a distinction between

1 fixed-term leases and month-to-month leases. The  
2 respondent admitted that if this was a  
3 month-to-month lease, that 30 days notice would be  
4 required by the law, but argues that this is a  
5 fixed-term lease.

6 But, again, paragraph 14 of the lease  
7 clearly says that 30 days written notice is  
8 required prior to terminating the lease. And to  
9 argue this is a fixed-term lease would completely  
10 make paragraph 14 meaningless. Because if it was a  
11 fixed-term lease, as Mr. Riddell argued in his  
12 brief, and no notice would be required, then why is  
13 that -- why is paragraph 14 there?

14 So, again, it's contrary to law to  
15 argue this is a fixed term as opposed to a  
16 month-to-month lease. She understood that she  
17 could live there month to month while she was  
18 negotiating a purchase and while it was for sale as  
19 she had agreed with the owners of the property.

20 And so, again, 30 days notice should be  
21 required, and that's the reason that respondent's  
22 argument about fixed term versus month-to-month  
23 leases should fail.

24 Now, the other reason that the  
25 magistrate's decision to issue the ejectment was

1 erroneous was that it refused to enforce the  
2 settlement agreement of the parties. And, again,  
3 the facts here are really clear and  
4 straight-forward.

5           The eviction was filed February 3th,  
6 again, as a surprise to Ms. Rich who understood  
7 that she would be given 30 days notice before  
8 termination. And she was negotiating the purchase  
9 of the property and was trying to figure out how  
10 they could continue to do that and not have to  
11 worry about the eviction hanging over her head.

12           So she went to Ms. Daniels, the  
13 representative of the owners, and said, you know,  
14 what -- what is the deal? What can we do about the  
15 eviction? And Ms. Daniels wrote, quote, seller  
16 said as soon as we have paperwork she will stop it,  
17 meaning the eviction.

18           Ms. Rich asked, what paperwork are they  
19 looking for? Last we spoke it was a pre-approval  
20 letter.

21           Ms. Daniels responded, yes, that's what  
22 I need. And Ms. Rich responded, okay. And then  
23 almost immediately, Ms. Rich provided that  
24 pre-approval letter, but the eviction wasn't  
25 dismissed.

1           Again, really basic contract principles  
2 here. As an offer of settlement she performed  
3 under the contract, which is an acceptance, and  
4 that contract should be enforced. And it should be  
5 enforced both in the interest of justice and  
6 because that's the law.

7           Now, I want to address a few of  
8 respondent's arguments on this issue. Really, the  
9 only one raised in the lower court was that the  
10 pre-approval letter either wasn't sufficient or  
11 that the paperwork required -- required more than  
12 what was provided. But in terms of the paperwork  
13 requiring more than the pre-approval letter or the  
14 paperwork that was referred to requiring a ratified  
15 contract, that's clearly not what the text messages  
16 say.

17           Again, Ms. Rich asked specifically,  
18 what paperwork are they looking for? Last we  
19 spoke, it was a pre-approval letter. And  
20 Ms. Daniels responded, yes, that's what I need.  
21 And Ms. Rich said, okay. And provided the  
22 pre-approval letter.

23           Now, with regard to the sufficiency of  
24 the pre-approval letter, again, the pre-approval  
25 letter says right on the face of this that it's for

1 that property, and they had already agreed to a  
2 price. So there was no need to have a pre-approval  
3 letter with a certain amount which, again,  
4 respondent's argument of this pre-approval letter  
5 wasn't sufficient because they didn't have an  
6 amount.

7 So, again, that's an argument that  
8 should fail because the pre-approval letter was  
9 sufficient.

10 Now, respondent also made a couple of  
11 technical arguments in their appeal brief that were  
12 not part of the lower court because they had more  
13 to do with the appeal. The first is that the  
14 pre-approval letter was not admitted into evidence  
15 in the lower court.

16 And so a couple of points here. One,  
17 the statute regarding appeals from magistrate court  
18 specifically says that the circuit court should  
19 review the case without regard to technical errors  
20 and defects which do not affect the merits. Again,  
21 this would be a technical defect that would not  
22 affect the merits.

23 And Rule 13 says that the trial in  
24 magistrate's court should be conducted in an  
25 informal manner and, quote, rules of evidence shall

1 be relaxed in the interest of justice.

2 And even if it's not in evidence, it  
3 doesn't matter because both Ms. Rich and  
4 Ms. Daniels testified about the pre-approval  
5 letter. Ms. Rich testified to it during  
6 cross-examination from Ms. Wolf, and Ms. Daniels  
7 testified in her testimony that she received the  
8 pre-approval letter.

9 And then the final argument that I want  
10 to address that respondent made in their brief is  
11 that Ms. Daniels did not have the authority to bind  
12 the owners and respondent to this settlement  
13 agreement. And, again, this wasn't an argument  
14 made in the lower court so it should be ignored in  
15 any event, but the brief doesn't even say that  
16 Ms. Daniels did not have authority.

17 I think it's pretty clear that she had  
18 actual authority, but even if she didn't have  
19 actual authority, even if they had made that  
20 argument, even if they had said that in their  
21 brief, which they haven't, she certainly had  
22 apparent authority.

23 And I pulled a case, and I didn't cite  
24 it in my brief because I didn't anticipate this  
25 argument. And I will just read it complete for the

1 Court. This is Town of Kingstree v Chapman, and  
2 the cite is -- this is a South Carolina Court of  
3 Appeals case. The cite is 405 S.C. 282. This is  
4 from 713, and I'm reading from page 315.

5 And it basically says, apparent  
6 authority of an agent results from conduct or other  
7 manifestations of the principal whereby third  
8 persons are justified in believing the agent is  
9 acting within its authority. Such authority is  
10 implied where physically -- where the principal  
11 passively permits the agent to appear to a third  
12 person to have authority to act on his behalf.

13 I think it's very clear that  
14 Ms. Daniels was acting on the apparent authority  
15 here, if not actual authority, to bind the owners  
16 with regard to the eviction and the purchase of  
17 this property.

18 THE COURT: What is your client hoping  
19 to get out of this?

20 MR. DARBY: And, Your Honor, that --

21 THE COURT: Does she want to rent it or  
22 does she want to buy it?

23 MR. DARBY: Well, she wanted to buy it  
24 before everything fell through. And then she was  
25 perfectly happy moving out. All she wanted was the

1 30 days notice that she was promised in the lease.  
2 And they just didn't give it to her. And then she  
3 was just trying to resolve this issue so that she  
4 could move on and move out and move on with her  
5 life, but --

6 THE COURT: Well, is she still living  
7 there?

8 MR. DARBY: Pardon me?

9 THE COURT: Is she still living in  
10 there?

11 MR. DARBY: She is. And part of the  
12 reason -- part of the main reason is that every  
13 landlord she's gone to that would keep her in her  
14 school district so her kids didn't have to move  
15 school has refused to rent to her because she has  
16 this stain on her record because this writ of  
17 ejectment has been issued against her.

18 So if Your Honor dismisses this case  
19 and it shows up in a public record as a dismissed  
20 eviction, and she's able to go rent, she's  
21 perfectly happy to move, but they can just issue  
22 their 30 days notice and she will move.

23 Like, she has no problem moving. She  
24 can't do it right now because every landlord she  
25 approaches says, you know, you have this writ of

1   ejection on your record and we can't rent to  
2   people that have that.

3                   THE COURT: Mr. Riddell, is your client  
4   willing to -- are they owed any money at this  
5   point? She is current on her rent, correct?

6                   You're muted.

7                   Is your client out any money? Are they  
8   owed anything? Rent?

9                   MR. RIDDELL: I haven't verified as of  
10   today. I'm pretty sure she was current through  
11   September -- the month of September, but I'm not --

12                   THE COURT: Seems to me that if -- if  
13   you both want the same thing, she wants out and you  
14   want her out, you can help her get out by agreeing  
15   to dismiss this appeal if she moves out. Why  
16   wouldn't that be a good solution for everyone?

17                   MR. RIDDELL: The parties have  
18   attempted to negotiate, Your Honor, but  
19   negotiations have fallen apart for various reasons  
20   and, you know, that kind of discussion wouldn't be  
21   admissible under the record anyways. But suffice  
22   it to say that it hasn't been this simple. There  
23   have been a few other things in play.

24                   THE COURT: Help me. What am I missing  
25   here? I mean, you have two people -- they want her

1 out and she wants to be out and all you've got to  
2 do -- if she owes you any money, then she wouldn't  
3 be in there if she owed you any money because part  
4 of the bond on an eviction is she has to keep  
5 paying the money. So it sounded like she was up to  
6 date at the time.

7 I'm just missing why this can't easily  
8 be resolved. She agrees to be out by a certain  
9 date, and then in the meantime you agree to dismiss  
10 this on the record so that it doesn't show up as a  
11 black eye against her being able to rent somewhere  
12 else.

13 It's a win-win for everybody that way.  
14 It's so simple, I can't understand why it's not  
15 already done.

16 MR. RIDDLE: Your Honor, suffice it to  
17 say my client has decided otherwise.

18 THE COURT: What do they want?

19 MR. RIDDLE: To win this appeal.

20 THE COURT: And -- and she's -- that  
21 will make her be out. I'm completely missing  
22 something obviously. You can't go back to them and  
23 say, the judge says why don't you just -- what's  
24 the date that she can be out?

25 MR. DARBY: I don't want to speak for

1 my client. She's already paid rent for October.  
2 She would prefer -- she wants 30 days notice, as  
3 she was promised and as she needs. So I think  
4 she's happy to pay November rent and be out by the  
5 end of November.

6 You know, Bethany, if that's not  
7 accurate, feel free to jump in and unmute yourself.

8 MS. RICH: That's something that we  
9 definitely could work out.

10 THE COURT: Mr. Riddell, you can't go  
11 back to the client and say, look, she agrees she'll  
12 be out by the end of November, and you would  
13 dismiss this appeal, and it would be over and she  
14 would be out?

15 I mean, no matter what I rule, it can  
16 be appealed. This gets her out, which is  
17 apparently what they want, and -- and it ends it.  
18 And she gets to move somewhere else without having  
19 this on her record.

20 MR. RIDDLE: I certainly understand why  
21 Your Honor would look for an easy resolution here.  
22 The way negotiations have worked out, it hasn't  
23 been that simple. So, no, I don't think that will  
24 work. I'm happy to revisit with my client, but,  
25 you know, we are prepared to win this appeal and

1 we're prepared to resolve this appeal and deal with  
2 whatever happens after that.

3 I don't want to continue this hearing  
4 right now or side step the decision on this appeal,  
5 because that's just the way all of these  
6 negotiations and attempts in trying to resolve it  
7 have led to.

8 THE COURT: Okay. Well, what do you  
9 want to say about the appeal?

10 Mr. Riddle, it's your -- ball's in your  
11 court.

12 MR. RIDDLE: Okay. So I'm not going to  
13 repeat the substance of my brief; I think I can  
14 write better than I speak any day of the week. So  
15 I will address some things that have come up in  
16 appellant's brief and his oral argument.

17 In his brief, he attempted to bring in  
18 new stuff into the record. The standard of review,  
19 while broad, isn't that broad. You can't bring in  
20 new exhibits for the first time, for example, where  
21 the record has already been supplied certified by  
22 the lower court.

23 Yes. The appellate court in this  
24 posture can consider factual issues with hearing  
25 from people on facts that don't go to the merits of

1 the action, but there's nothing in case law or the  
2 statute that controls appeals of magistrate's  
3 decisions that allows an appellate court to  
4 consider things that appellant filed for the first  
5 time into the record for this brief.

6 So that would include any other pages  
7 on the original lease besides the one page that is  
8 in the lower court record, and it would include the  
9 pre-approval letter. So the Court should not  
10 regard any of appellant's argument that relies on  
11 taking either of those things as gospel.

12 Another point is, a failure to admit  
13 evidence into the record in the lower court hearing  
14 isn't some mere technical defect. Appellant  
15 offered the magistrate court, you can hear it on  
16 the audio hearing, to show and attempt to admit the  
17 pre-approval letter. It didn't happen. That's not  
18 a technical defect.

19 That's one of the basic rights; each  
20 side has the opportunity to present their case.  
21 Just as it wouldn't be a technical defect if a  
22 party failed to bring up some argument in the lower  
23 court. So this Court should refuse that  
24 characterization of any holes in the record as  
25 being a mere technical defects such that they

1 should allow it now and consider these things now.

2 Just the fact that the original lease  
3 -- and, again, I'm arguing this assuming that the  
4 Court is going to allow this full lease into  
5 evidence, even though it hasn't been admitted into  
6 the record yet. Assuming that the original lease  
7 has this early termination or 30-day notice  
8 requirement in it, if the Court is going to allow  
9 new evidence, then I would want my client to  
10 testify right now that they gave all kinds of  
11 notice to Ms. Rich in the months leading up -- in  
12 the fall of 2019, leading up to the renewal for the  
13 month of January of her move-out date.

14 So if the Court wants to hear that now,  
15 I would turn it over to my client to testify on  
16 that, and then I would like to resume the rest of  
17 my argument.

18 THE COURT: Well, this is not a de novo  
19 hearing. So do you have anything else you want to  
20 argue?

21 MR. RIDDLE: Yes, Your Honor. So  
22 whatever the lease says in it, it didn't say  
23 anything -- appellant's argument didn't say any of  
24 this, what I'm about to say. It doesn't somehow  
25 displace or negate statutory law in this state

1 which is, on a fixed-term lease the tenant has to  
2 move out at the end of the lease term.

3 I mean, it's so common sense and  
4 obvious. It's nothing that a mere provision in a  
5 lease contract undoes somehow the lease having  
6 tried to admit doesn't purport to do that, doesn't  
7 address that statutory rule and so it's not like  
8 the statutory rule no longer has any effect.

9 It's just really, really common sense  
10 and reasonable to know that if you sign a contract  
11 for a fixed term, the contract expires at the end  
12 of that term. And statutory law states that no  
13 notice is required for those kinds of leases.

14 Let's see, for the other issue of --

15 THE COURT: Well, how is it that I can  
16 look at a lease without looking at the lease? You  
17 want me to look at the lease to read the terms of  
18 it, but you said, don't look at it because it's not  
19 in evidence.

20 MR. RIDDLE: Your Honor, appellant had  
21 the chance -- appellant filed a motion to get the  
22 lower court to send up a certified record to the  
23 higher court. This isn't my appeal. It isn't my  
24 client's appeal.

25 The appellant had the chance to review

1 that record as to any deficiencies that may have  
2 been in the record. So now I'm put in the awkward  
3 position to try to deal with two scenarios; one  
4 where the court considers anything that wasn't in  
5 the record and then the other scenario where the  
6 Court stays with the record.

7 So that's why I'm dealing with this  
8 awkwardness in this way. Just covering all the  
9 bases and arguing in the alternative. That's all  
10 that is.

11 So, you know, on this issue of whether  
12 the pre-approval letter counted as some sort of  
13 satisfaction of a condition to dismiss the  
14 eviction. In the first place, what appellant  
15 argued doesn't overcome the fact that there was  
16 never any signed agreement. What the appellant  
17 cited in the record as testimony from Barbara  
18 Daniels, the seller's agent for selling the home,  
19 just shows there was never any meeting of the  
20 minds.

21 Barbara Daniels testified that getting  
22 all of the paperwork meant not just getting the  
23 pre-approval letter, which was that next step in  
24 the process, but of course getting a ratified  
25 contract to buy.

1           As Ms. Daniels pointed out, she's been  
2 in the business for 40 years. It's very  
3 unreasonable to -- for anyone, Ms. Rich in this  
4 scenario, to impute a meaning on paperwork to mean  
5 just a pre-approval letter without anything more as  
6 somehow giving her the right to stay in there  
7 forever while negotiating to purchase the house.

8           Furthermore, when the pre-approval  
9 letter doesn't have any amount, there wasn't enough  
10 for the owner or Ms. Daniels to say, okay, it looks  
11 like this is actually going to happen. So there  
12 was never a meeting of the minds. There was never  
13 a signed thing.

14           There was just a text, one cell phone  
15 page of texts that somehow consummates an agreement  
16 on something as complex with all of the moving  
17 parts as negotiating a lease and what happens with  
18 an eviction. It's just a strange reason to think  
19 that that was a consummated agreement that could be  
20 enforced against the owner.

21           And so appellant said that it was  
22 Ms. Rich's understanding. It was Ms. Rich's  
23 understanding that she could stay there forever.  
24 She was on a month-to-month agreement. That's  
25 fine, but the Court can consider, as the lower

1 court did, whatever Ms. Rich's understanding was,  
2 but that doesn't necessary lead to the legal  
3 conclusion that there was an agreement to dismiss  
4 the eviction in the way Ms. Rich hoped for.

5 So for that reason, I would ask the  
6 Court to deem that there was never any consummation  
7 of that agreement, and so there wasn't any error by  
8 the magistrate.

9 Thank you.

10 THE COURT: All right.

11 Do you want to respond to anything,  
12 Mr. Darby?

13 MR. DARBY: Briefly. And I think I  
14 kind of addressed some of this in my initial  
15 statement. To be clear, I think Mr. Riddell -- is  
16 it Riddell or Riddell? I'm sorry.

17 MR. RIDDELL: Riddell.

18 MR. DARBY: Riddell. Mr. Riddell,  
19 again, is arguing that this is a fixed-term lease.  
20 And, again, my point, which I hope I've made clear,  
21 the lease specifically says that you have to give  
22 30 days notice when the end date comes up.

23 And every lease that I've said that  
24 requires 30 days notice prior to ending it has been  
25 interpreted to be a month-to-month lease after the

1 end of that initial term, and so this is no  
2 different. And so that's the reason the 30 days  
3 notice should be required.

4 And I think I have already addressed  
5 all the other arguments. Again, on the practical  
6 point that I think Your Honor seemed to focus on  
7 earlier, you know, if the Court ruled in  
8 appellant's favor, she's not trying to stay there  
9 forever.

10 Mr. Riddell mentioned that there was  
11 testimony in the lower court that the realtor --  
12 that she was maybe trying to stay there forever.  
13 She merely is trying to enforce the agreement.  
14 They said they were going to dismiss it if she gave  
15 them a pre-approval letter. She gave them the  
16 pre-approval letter and they didn't dismiss it.  
17 Had they dismissed it, she would have been happy to  
18 move. She is happy to move now.

19 If her appeal is upheld, there is  
20 nothing stopping the respondent from giving her  
21 30 days notice tomorrow to move out, and then none  
22 of her current arguments would be able to be raised  
23 in a subsequent hearing, because the notice would  
24 be provided and there would be -- assuming they  
25 didn't enter into another settlement agreement they

1    tried to back out of, there would be no settlement  
2    agreement.

3                    So I think the practical resolution  
4    here is for Your Honor to uphold our appeal and let  
5    them give her the 30 days notice she deserves and  
6    move out, and we can all be done with this and  
7    don't have to worry about further appeals and  
8    anything along those lines.

9                    MR. RIDDELL: Your Honor, I would just  
10   like to respond to one thing he said.

11                   THE COURT: Go ahead.

12                   MR. RIDDELL: I think he characterized  
13   the month of January that was the extension of the  
14   lease as a month to month. A month-to-month lease  
15   is what happens when a written agreement runs out  
16   and then the tenant stays there. That's a  
17   month-to-month lease under statutory law.

18                   What happened in this case, the parties  
19   signed a one month extension to the written lease.  
20   It remained a written lease, a fixed-term lease.

21                   So there wasn't any sudden importation  
22   into the deal in January that the statutory rule  
23   requiring 30 days notice applied. That should not  
24   be how the Court views this. There always was a  
25   written lease up until the time my client filed the

1     eviction.

2                     Just because the provision that  
3     appellant refers to said that either party may  
4     terminate the lease by providing 30 days written  
5     notice, again, that doesn't undue the fact that  
6     it's a fixed-term lease and it doesn't try to  
7     negate the power of statutory law on fixed-term  
8     leases.

9                     Thank you.

10                    THE COURT: All right. Well, about  
11     just 15 minutes before we started, the clerk  
12     brought me up the file with the -- it says, two  
13     CDs. I assume this is the audio of the  
14     magistrate's hearing below which I'm going to need  
15     to listen to, because I'm confused as to how  
16     somebody can make a rule on a lease without having  
17     the lease in evidence.

18                    So I'm going to have to listen to that.  
19     So I will take it under advisement and let you know  
20     what I decide. Okay.

21                    I encourage you to try to work it out.

22                    MR. DARBY: Your Honor, if I could get  
23     one clarification or maybe it would be helpful to  
24     note how long you anticipate -- I just want to make  
25     sure if Ms. Rich pays -- you know, if we --

1 THE COURT: She can continue to stay  
2 there as long as she makes the monthly payments on  
3 time.

4 MR. DARBY: If she pays November rent,  
5 she'll be able to stay until at least the end of  
6 November if she's paid that rent, right?

7 THE COURT: Yep.

8 MR. DARBY: Thank you, Your Honor.

9 THE COURT: Okay. All right. I will  
10 let you know what I decide.

11 (These proceedings were concluded at  
12 4:32 p.m.)

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CERTIFICATE OF REPORTER

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

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

Witness my hand, I have hereunto affixed my official seal this 12th day of February, 2021, at Charleston, Charleston County, South Carolina.

S/Carol Denise Lauder  
Carol Denise Lauder  
Registered Professional  
Reporter, CP  
My Commission expires  
February 27, 2028

EXHIBIT A

NEW HEIGHTS PROPERTY MANAGEMENT RESIDENTIAL RENTAL AGREEMENT

This Rental Agreement made at Summerville, South Carolina, dated 12/10/2018, between:

Bethany Aloha Rich

(hereinafter called "TENANT"), Joseph and Denise Pastré (hereinafter called "LANDLORD"), by his agent, New Heights Property Management (hereinafter called "AGENT") for the property located at:

169 Decatur Dr, Summerville, SC 29486-5333

THE  AGENT  TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

- 1. **LANDLORD TENANT ACT:** This Rental Agreement is governed by the South Carolina Residential Landlord and Tenant Act.
- 2. **LOCATION:** The Landlord hereby rents to the Tenant and the Tenant hereby rents from the Landlord a parcel of property located in the County of Berkeley County, State of South Carolina, which parcel of land with improvements will constitute the premises. Said parcel of land is more particularly described as follows:

169 Decatur Dr, Summerville, SC 29486-5333

3. **TERMS:** This Rental Agreement shall commence on the 12/10/2018, and end on 12/09/2019 at 12:00 Midnight. Tenant covenants that upon the termination of this Rental Agreement, or any extension thereof that the Tenant will quietly and peaceably deliver possession of the premises in good order and condition, reasonable wear and tear expected, free of Tenant's personal property, garbage and other waste, and return all keys to the Landlord. ~~Should any extension of the lease or previous renewal be negotiated, the tenant will be charged a \$50.00 lease renewal fee.~~

If the Tenant remains in possession without the Landlord's consent after the expiration of the term of the rental agreement, or its termination, the Tenant will be responsible to pay two (2) times the daily rate listed in Paragraph 4 for each day until possession is relinquished to the Landlord.

4. **RENT:** Tenant agrees to pay Landlord a total rent of \$18,000.00. Said rent shall be payable in monthly installments of \$1,500.00, on or before the first day of every month during said term. The rent is payable to New Heights Property Management at 237 Old Summerville Road Suite F, Summerville, SC 29483 or as Tenant may be advised from time to time in writing. Where the term of the Rental Agreement commences or terminates on a day other than the first day of the month, Tenant shall pay rent unto the Landlord in the amount of the daily rental rate based on the current calendar month. Once Tenant provides a move-out date to the Landlord in keeping with the termination provisions contained herein, Tenant shall pay two (2) times the daily rate for any day or days they occupy the premises past the move-out date they provide to the Landlord.

**NOTICE TO TENANT:** IF TENANT DOES NOT PAY RENT WITHIN FIVE (5) DAYS OF THE DUE DATE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTES WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.

Tenant further understands that if there are any outstanding charges on the Tenant's account with Landlord, any monies received will be applied to the oldest outstanding charges first.

 | | | | | TENANTS AND  AGENT HAVE READ THIS PAGE.

5. **LATE FEES:** Tenant further agrees to pay a late fee of Ten Percent (10%) of the monthly rent outlined in Paragraph 4. An additional late fee of Seventy-Five Dollars (\$75.00) shall be owed if rent is paid after the 15<sup>th</sup> of the month.

6. **OCCUPANTS:** Only persons designated in the Rental Agreement or as further modified or agreed to in writing by Landlord shall reside in the rented premises. In no event shall more than 3 persons be allowed to occupy said premises. For purposes of this Rental Agreement the designated occupants are as listed below:

Bethany Aloha Rich

7. **RETURNED CHECKS:** Tenant agrees to pay Thirty Dollar (\$30.00) NSF fee and an additional Fifteen Dollar (\$15.00) administrative fee for each dishonored check or electronic payment, **plus late charges if the check is not made good before the sixth day after the original rent due date.** If more than one check is returned, Tenant agrees that all future rent and charges shall be paid in the form of cashier's checks, certified check, or money order. If any check for the security deposit or first month's rent is returned for insufficient funds or stop payment, Landlord may declare this Rental Agreement void and immediately terminated, **PAYMENT FOR EACH DISHONORED CHECK OR ELECTRONIC PAYMENT AND FEES MUST BE WITHIN 48 HOURS OF NOTIFICATION BY CASHIER'S CHECK, AND/OR MONEY ORDER.**

8. **SECURITY DEPOSIT:** Tenant agrees to deposit with Landlord a security deposit of \$1,300.00 to be held as security in the Agent's trust account for the full and faithful performance by the Tenant of all terms and conditions herein, it being understood and agreed to that no part of this deposit is to be applied to any rent which may become due under this Rental Agreement. Upon termination of the tenancy, property or money held by the Landlord as security may be applied to the payment of accrued rent, any other outstanding charges, and the amount of loss of rents or damages which the Landlord has suffered by reason of the Tenant's noncompliance with the South Carolina Residential Landlord and Tenant Act. Any deduction from the security deposit must be itemized by the Landlord in a written notice to the Tenant together with the amount due, if any, within 30 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 in which 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; 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. In the event security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within five (5) business days after receiving notice from Landlord. Tenant shall be responsible to pay an Administrative Fee of Two Hundred Dollars (\$200.00) to compensate Landlord for administering vendors, repairs, additional inspections and other tasks that may be needed if Tenant's actions or inactions result in deductions being taken from the Security Deposit.



9. **TRUST ACCOUNT INTEREST:** ACCORDING TO THE RULES AND REGULATIONS OF THE SOUTH CAROLINA REAL ESTATE COMMISSION AND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE HAS THE OPTION TO PLACE TENANT'S SECURITY DEPOSIT INTO AN INTEREST BEARING ACCOUNT AND TO RETAIN ALL INTEREST ACCRUED IN SAID ACCOUNT. TENANT AGREES TO AND UNDERSTANDS THAT THE TENANT HAS BEEN INFORMED OF TENANT'S RIGHT TO OWNERSHIP OF THE INTEREST BUT RELINQUISHES TO THE BROKER-IN-CHARGE OR PROPERTY MANAGER-IN-CHARGE BY THIS WRITTEN AGREEMENT SAID RIGHT OF OWNERSHIP.

10. **ESSENTIAL SERVICES:** Landlord is required to provide essential services; meaning sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat except where the building that includes the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of Tenant and supplied by a direct public utility connection.

11. **INVENTORY AND APPLIANCES:** Any furnishings to be furnished by Landlord shall be set out in a separate inventory addendum. The inventory addendum shall be signed by both Tenant and Landlord concurrently with this Rental Agreement and shall be a part of this Rental Agreement. The following appliances or equipment present in the dwelling unit are specifically included by this Rental Agreement as being deemed to be supplied by the Landlord: [X] stove, [X] refrigerator, [X] dishwasher, [X] disposal, [NA] washer, [NA] dryer, [X] microwave, [X] other: ice maker, pool, porch, screened porch. Tenant will not move or relocate any appliances without written permission from the Landlord.

The following appliances or equipment are at the property for the convenience of the tenant but shall not be maintained nor replaced by the Landlord: [NA] washer, [NA] dryer.

**KEYS:** Landlord shall provide to the tenant, and tenant shall return same upon termination of possession. [NA] pool tags/keys, [NA] community/gate/common area keys [NA] keys for mailbox, [NA] keys to unit (including deadbolt, storage areas, [NA] garage door opener. If the tenant does not return all keys, Landlord has the right to replace the keys or re-key locks at Tenant expense.

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12. **SUBLEASE:** Tenant shall not assign or sublet said premises, or any portion thereof without written consent of Landlord. Tenant must have written permission from Landlord for guests to occupy the premises for more than Fourteen (14) days.

13. **RENTAL APPLICATION:** Tenant acknowledges that the Landlord has relied upon the rental application as an inducement for entering into this agreement, and the Tenant warrants to the Landlord that the facts stated in the application are true to the best of Tenant's knowledge. If any facts stated in the rental application prove to be untrue, the Landlord shall have the right to terminate the residency immediately and to collect from the Tenant any damages including reasonable attorney fees resulting there from.

14. **LEASE TERMINATION:** Either party may terminate this Rental Agreement at the end of the initial term with thirty (30) days written notice as defined in Paragraph 16.

15. **RENTAL RATE AND TERM ADJUSTMENT:** On and after the expiration of the initial term of this Rental Agreement, the Landlord, at Landlord's discretion, may alter the rental rate or other terms and conditions in effect provided only that written notice of such alteration is delivered at least forty-five (45) days prior to the effective date of alteration.

16. **DEFINITION OF THIRTY (30) DAYS NOTICE:** Any written notice given by either party to the other party in order to meet a thirty (30) day notice requirement will be deemed given, and the thirty (30) days deemed to commence on the first day of the calendar month following the date of receipt of said notice. Any termination permitted by other sections contingent upon thirty (30) day notice will then be effective on the last day of the calendar month following receipt of said notice. If expiration date of lease is not on the last day of the calendar month, then thirty (30) days notice is required to conform to the expiration dates.

17. **UTILITIES AND SERVICES:** Tenant agrees to pay for all utilities and services except: N/A which will be paid by Landlord. Landlord is not responsible for paying any utility bills, for any reason, while the Tenant occupies the premises. In the event of Tenant's default on payment of utilities, Landlord may pay and charge Tenant together with any penalties, charges, damages and interest. Tenant shall be liable for any damages and inspections required by local authorities/utility companies due to Tenant's failure to obtain service by the start date of this Rental Agreement or to maintain said service during the term of this agreement. Tenant shall pay all costs of hook-ups and connection fees and security deposits in connection with providing utilities to premises during the term of the Lease.

**18. TENANT RESPONSIBILITIES:**

- a. Tenant agrees to keep the dwelling unit and all parts of the leased premises safe and clean. Tenant agrees to be responsible for removal of Tenant's contagious and other hazardous materials.
- b. Tenant shall report to Landlord any malfunction of or damage to electrical, plumbing, HVAC systems and any occurrence known of that reasonably should be known to the Tenant that may cause damage to the property.
- c. Tenant shall pay for the cost of all repairs made necessary by negligence or careless use of the premises and pay for repairs/loss resulting from theft, malicious mischief or vandalism by Tenant, any member of Tenant's family, guests or other person under Tenant's control. Tenant shall provide a police report and cooperate with the police and/or testify for any loss resulting from theft, malicious mischief or vandalism; as evidence that the damage is not by Tenant and their guests.
- d. **Routine Maintenance:** Tenant shall be responsible for and to make at Tenant's expense all routine maintenance, including but not limited to, stoppage of sewer because of misuse or broken water pipes/fixtures due to neglect or carelessness of Tenant, and shall replace any burned out light bulbs. It is specifically understood that the Tenant shall, at Tenant's expense, keep sinks lavatories, and commodes open, and shall report any water leaks to Landlord immediately.
- e. **Equipment/Furniture:** Tenant is directly responsible for any damage caused by Tenant's appliances and/or furniture. Tenant agrees not to place antennas, satellite dishes, waterbeds, and auxiliary heaters without written permission from Landlord. Tenant agrees that any damage caused by these items, even with Landlord permission, is the sole responsibility of the Tenant.
- f. **HVAC System:** Tenant is responsible for changing HVAC filters as needed and will be responsible for HVAC servicing fees if any excessively dirty filter is found at any time. Tenant will also be held liable for damage to HVAC systems caused by dirty or missing filters and damages resulting from unreported problems.
- g. **Landscaping and Yard Maintenance:** The Tenant is responsible for yard maintenance which shall include but is not limited to mowing and watering the lawn, keeping any planting beds free of weeds, replacing mulch as needed, trimming shrubs and trees, and keeping the premises free from debris and fire ants.

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**h. Smoke Detectors:** Tenant acknowledges that Premises is equipped with a smoke detector(s) that is/are in good working order and repair. Tenant agrees to be solely responsible to check the smoke detector(s) every thirty (30) days and notify Landlord immediately if any smoke detector is not functioning properly. Tenant shall maintain batteries in smoke detector(s) as needed. Tenant acknowledges receipt of instructions of smoke detector operation.

**i. Pest Control:** Tenant shall report any pest or rodent problem within three (3) days of possession. Tenant's failure to identify any pest or rodent infestation within said three (3) days shall constitute Tenant's agreement that the premises have no infestation of any kind. Tenant is responsible for reporting any suspected or known termite infestation but is not responsible for termite control. Any future infestation of any kind, less termites, shall be the responsibility of the Tenant.

**j. Adverse Weather:** Tenant acknowledges responsibility to mitigate damage caused by severe weather. In the case of a Hurricane or Named Storm or the threat of a Hurricane or Named Storm, Tenant is to remove all non-secured items that are on the exterior of the premises so that they do not cause damage. Tenant agrees that if they evacuate they will provide the Landlord with contact information. If the temperature outside falls below 32 degrees, the Tenant is responsible for protecting the premises by taking steps to reduce the likelihood of frozen pipes including but not limited to irrigation system, if present.

**k. Mold and Mildew:** Tenant acknowledges that mold and mildew is common in this area and some forms of mold and mildew can be harmful to tenants and/or their guests. Exposing any portion of the premises to elevated levels of moisture may cause mold or mildew to grow. To maintain adequate air flow, Tenant should not block or cover any air conditioning, heating or ventilation ducts located in the premises. Tenant shall regularly inspect the Premises and immediately report to Landlord any sign of mold and/or mildew (other than found in sinks, showers, toilets and other areas designated to hold water or to be wet areas) and any water intrusion problems.

**19. RULES AND REGULATIONS:** Tenant, or any member of Tenant's family, guest, or other person under the Tenant's control, shall conduct themselves in a manner that will not disturb other Tenants and neighbors' peaceful enjoyment of the premises. Tenant, or any member of Tenant's family, guest or other person under the Tenant's control, shall not engage in or facilitate criminal or drug activities. Any such violation constitutes a substantial violation of the Lease and a material noncompliance with the Lease and is grounds for termination of tenancy and eviction from the premises.

**a. Alterations:** No repairs, alterations or changes in or to said premises or the fixtures or appliances contained therein, shall be made except after written consent of Landlord, and it shall be the responsibility of the Tenant for the cost of restoring said premises to their original condition if Tenant makes any such unauthorized modifications. **NO REPAIR COSTS SHALL BE DEDUCTED FROM RENT BY TENANT.** All improvements made by Tenant to the said premises shall become property of the Landlord.

**b.** Tenant is prohibited from adding, changing or in any way altering locks installed on the doors of Premises without prior written permission of Landlord.

**c.** The premises, common elements and limited common elements, are subject to applicable rules, regulations, covenants/restrictions either posted by the Landlord or any Homeowner Association or Municipal Ordinance and the Tenant agrees to observe faithfully all those rules and regulations that are currently in effect or may be adopted. **ANY FINES, FEES OR CHARGES DUE TO VIOLATIONS SHALL BE PAID BY TENANT,** in addition to a \$25 HOA coordination fee for providing violations and/or fees.

**d.** Motor vehicles with expired or missing license plates, non-operative vehicles, boats, trailers, RVs and campers are not permitted on Premises, without the Landlord's written permission. Any unauthorized vehicle may be removed by Landlord and Tenant shall be responsible for all charges and Tenant shall have no right or recourse against Landlord thereafter. Tenant shall be responsible for any damage to the Premises due to the parking, driving or storage of any vehicles and/or trailers on yard or landscape.

**e.** No nails, screws or adhesive hangers except standard picture hooks, shade brackets and curtain rod brackets may be placed in walls, woodwork or any part of premises.

**f.** No animals are allowed unless the "Animal Addendum" is attached to this rental agreement.

**g.** Tenant shall keep all utilities serving the premises on at all times during the term of the rental agreement and through the completion of the Move Out Inspection including but not limited to garbage, water, electric, and gas. Should Tenant fail to keep utilities on through the Move Out Inspection Tenant shall pay Landlord as additional rent the total cost of reconnecting the utilities and an administrative fee of Fifty Dollars (\$50.00).

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**20. INSPECTIONS:**

**a. Move-In Inspection:** Tenant acknowledges that the Tenant is accepting the premises in "As Is" condition with the exception of any repairs or modifications as required by law. Tenant acknowledges that Tenant has been provided a move-in inspection form to be completed and returned to Landlord within three (3) days of possession or Tenant may be responsible for damages to the property based on the Landlord's findings.

**b. Move-Out Inspection:** It is agreed that the move-out inspection will be made within three (3) working days after Tenant has completely vacated the premises and notified Landlord in writing. Said inspection will be conducted during normal business hours Monday through Friday. No Move-Out Inspection will be made on holidays or weekends and **utilities must be left on for this inspection.** Tenant will be charged if a return visit by the Landlord is necessary due to Tenant not being completely moved out. Tenant may choose to be present during the inspection and Tenant's failure to appear shall constitute the Tenant's agreement to accept the Landlord's report as conclusive and final.

Tenant shall pay Landlord a Lease Administration Fee of \$200.00 upon execution of Rental Agreement.

**21. INSURANCE:** Tenant acknowledges that the Landlord does not carry insurance, nor is responsible, to cover the Tenant's personal property or personal liability. Tenant agrees to comply with the requirements of the Landlord's present or future insurance carriers and not to permit anything to be done at or within the premises which shall cause cancellation of the Landlord's policy or increase in the current rate of insurance thereon. Tenant is responsible for any loss incurred by the Landlord due to Tenant neglect, misuse, abuse or accident caused by the Tenant. Tenant also agrees that Landlord is not responsible for loss of perishable goods should there be a mechanical failure of any appliance or equipment provided by the Landlord.

Tenant is required to maintain a renter's insurance policy at all times during occupancy. Proof of such policy must be presented to Landlord prior to move-in. Should the Landlord discover at any time during occupancy that there has been a lapse in coverage, the Landlord may obtain a policy to protect the Landlord against damages by the Tenant. Said policy does not protect the Tenant. Landlord may charge the Tenant for the cost of the policy plus a monthly administrative fee of Twenty-Five Dollars (\$25.00).

**22. INDEMNIFICATION:** Tenant agrees to indemnify and hold Landlord harmless from and against any and all injuries, damages, losses, suits and claims against Landlord arising out of or related to: (1) Tenant's failure to fulfill any condition of this Lease; (2) any damage or injury happening in or to Property or to any improvements there on as a result of the acts or omissions of Tenant or Tenant's family members, invitees or licensees; (3) Tenant's failure to comply with any requirements imposed by any governmental authority; (4) any judgment, lien or other encumbrance filed against Property as a result of Tenant's actions and any damage or injury happening in or about Property to Tenant or Tenant's family members, invitees or licensees (except if such damage or injury is caused by the intentional wrongful act of Landlord); (5) failure to maintain or repair equipment or fixtures, where Landlord use their best efforts to make the necessary repairs within a reasonable time period and Tenant covenants not to sue Landlord with respect to any of the above-referenced matters. In addition to the above, Tenant agrees to hold Landlord harmless from and against Owner of the Property for not paying or keeping current with any mortgage, property taxes or home owners association fee's on the Property or not fulfilling the Owner's obligations under this Rental Agreement.

**23. RIGHT TO ACCESS:** The Tenant shall not unreasonably withhold consent to the Landlord or Landlord's designee to enter into the dwelling unit in order to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; supply necessary or agreed services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, prospective tenants, workmen, or contractors. The Landlord or Landlord's agent may enter the dwelling unit without consent of the Tenant:

- a. At any time in case of emergency including but not limited to prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency; and
- b. Between the hours of 9:00am and 6:00pm for the purpose of providing regularly scheduled periodic services such as changing furnace or air-conditioning filters, providing termite, insect, or pest treatment, and the like, provided that the Landlord announces intent to enter to perform services; and
- c. Between the hours of 8:00am and 8:00pm for the purpose of providing services requested by the Tenant and that prior to entering the Landlord announces intent to enter to perform services.

The Landlord shall not abuse the right of access or use it to harass the Tenant. Except for section 23(a), 23(b), and 23(c), the Landlord shall give the Tenant at least 24 hours notice of intent to enter and may enter only at reasonable times. The Landlord has no other right of access except pursuant to court order, as permitted by the South Carolina Residential Landlord and Tenant Act when accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings, or unless the Tenant has abandoned or surrendered the premises.

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**24. MILITARY CLAUSE:** If the Tenant is a member or becomes an active member of the Armed Forces of the United States, or is a reservist called to active duty and is stationed in the Charleston area, and shall receive permanent change of station orders out of the Charleston area or deployment of 90 days or more, Tenant may, upon presentation of a copy of said orders of transfer or deployment to the Landlord, along with thirty (30) days written notice of intent to vacate and payment of all rent to the expiration date of such written notice, and any miscellaneous charges in arrears, terminate this Rental Agreement. Normal enlistment termination or other type of discharge from Armed Forces, unless due to conditions beyond the service member's control or acceptance of government quarters is not a permanent change of station and is not justification for lease termination. Withholding knowledge of pending transfer or discharge at time of entry into this Rental Agreement voids any consideration or protection offered by this section.

**25. DESTRUCTION OR DAMAGE TO PREMISES:** If the dwelling unit or premises are damaged or destroyed by fire or casualty to extent that normal use and occupancy of the dwelling unit is substantially impaired, the Tenant may:

- a. Immediately vacate the premises and notify the Landlord in writing within seven (7) days thereafter of Tenant's intention to terminate the Rental Agreement in which case the Rental Agreement terminates as of the date of vacating; or
- b. If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the Tenant's liability for rent is reduced in proportion to the diminution in the fair-market rental value of the dwelling unit.

Unless the fire or casualty was due to the Tenant's negligence or otherwise caused by the Tenant, if the Rental Agreement is terminated, the Landlord shall return security deposit to the Tenant with the proper accounting as required by law. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty. The Landlord shall withhold from the Tenant's security deposit all damages incurred if the fire or casualty was due to the Tenant's negligence or otherwise caused by the Tenant, with proper accounting as required by law.

**26. CONDEMNATION AND FORECLOSURE:** Tenant hereby waives any injury, loss or damage, or claim therefore against Landlord resulting from any exercise of a power of eminent domain of all or any part of the rented premises or surrounding grounds of which they are a part. All awards of the condemning authority for the taking of land, parking areas or buildings shall belong exclusively to the Landlord. In the event substantially all of the rented premises shall be taken, this Rental Agreement shall terminate as of the date the right to possession vested in the condemning authority and rent shall be apportioned as of that date. In the event any part of the property and/or building or buildings of which the rented premises are a part (whether or not the rented premises shall be affected) shall be taken as a result of the exercise of a power of eminent domain and the remainder shall not in the opinion of the Landlord, constitute an economically feasible operating unit. Landlord may, by written notice to Tenant given within sixty (60) days after the date of taking, terminate this Rental Agreement as of a date set out in the notice not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of the termination date. If the residential unit is subject to a foreclosure proceedings or tax sale, notice of said sale does not release the Tenant from Tenant's obligations in this lease nor does it authorize the Tenant to withhold payment of rent.

**27. ABSENCE, NON-USE AND ABANDONMENT:** The unexplained absence of a Tenant from a dwelling unit for a period of fifteen (15) days after default in the payment of rent must be construed as abandonment of the dwelling unit. If the Tenant abandons the dwelling unit before the expiration of the Rental Agreement, it terminates as of the date of the new tenancy subject to the other Landlord's remedies. If the Landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the Landlord accepts the abandonment as surrender, the Rental Agreement is considered to be terminated by the Landlord as of the date the Landlord has notice of the abandonment. When a dwelling unit has been abandoned or the Rental Agreement has come to an end and the Tenant has removed a substantial portion of personal property or voluntarily and permanently terminated the utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of \$500 or less, the Landlord may enter the dwelling unit, using forcible entry if required and dispose of the property.

**28. NONCOMPLIANCE WITH RENTAL AGREEMENT OR FAILURE TO PAY RENT:** If there is a noncompliance by the Tenant with the Rental Agreement other than nonpayment of rent or a noncompliance with Paragraphs 17 or 18 above, the Landlord may deliver a written notice to the Tenant specifying the acts and omissions constituting the breach and that the Rental Agreement will terminate upon a date not less than 14 days after receipt of the notice, if the breach is not remedied in 14 days. The Rental Agreement shall terminate as provided in the notice except that: If the breach is remediable by repairs or otherwise and the Tenant adequately remedies the breach before the date specified in the notice, or if such remedy cannot be completed within 14 days, but is commenced within the 14-day period and is pursued in good faith to completion within a reasonable time, the Rental Agreement shall not terminate by reason of the breach.

The Landlord may recover actual damages and obtain injunctive relief in magistrate's or circuit court without posting bond for any noncompliance by the Tenant with the Rental Agreement or Paragraphs 18 or 19 above. If the Tenant's noncompliance is willful other than nonpayment of rent, the Landlord may recover reasonable attorney's fees. If the Tenant's nonpayment of rent is not in good faith, the Landlord is entitled to reasonable attorney's fees.

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If there is noncompliance by the Tenant with Paragraphs 18 or 19 above, materially affecting health and safety that can be remedied by repair,

replacement of a damaged item, or cleaning and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord specifying the breach and requesting that the Tenant remedy it within that period of time, the Landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and shall in addition have the remedies available under the South Carolina Residential Landlord Tenant Act.

If there is noncompliance by the Tenant with Paragraphs 18 or 19 above materially affecting health and safety other than as set forth in the preceding paragraph, and the Tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen (14) days after written notice by the Landlord if it is not an emergency, specifying the breach and requesting that the Tenant remedy within that period of time, the Landlord may terminate the Rental Agreement.

**29. EARLY TERMINATION WITH NOTICE:** In the event the Tenant terminates this contract prior to the conclusion of the terms in Paragraph 3 the following charges are to be paid to the Landlord to mitigate any damages suffered by the Landlord due to the early termination. Tenant agrees to pay all rent and late fees due to the Landlord for the period of time left on the lease until the Landlord has re-rented the unit or the use of the premises is changed to something other than a rental. Tenant further agrees to assume cost due the Landlord resulting from Landlord's efforts to locate a new tenant or securing the residence. Fees may include but are not limited to: Advertising, Leasing Commissions, Re-Keying, Administrative Fee and Management costs owed by the Landlord due to securing a new tenant plus cleaning or any other steps taken to return the unit to marketable condition. Landlord and Tenant agree that these fees are not punitive in nature but are rather to be used to mitigate damages resulting from the early termination of the lease by the Tenant.

**30. REMEDY AFTER TERMINATION:** If the Rental Agreement is terminated for any cause, the Landlord has a right to possession, to collect rent, and a separate claim for actual damages for breach of the Rental Agreement, reasonable attorney's fees, collection costs, collection agency fees and court costs. **Any claim not satisfied by Tenant may be turned in to the credit bureau or collection agency.**

**31. NOTICE:** A Landlord receives notice when 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 Landlord as the place of receipt of the communication.

**32. WAIVER:** A Tenant is considered to have waived violation of a Landlord's duty to maintain the premises as set forth by the Rental Agreement or violation of the Landlord's duties under the South Carolina Residential Landlord and Tenant Act, as defense in an action for possession based upon nonpayment of rent, or in an action for rent concerning a period where the Landlord has no notice of the violation of the duties, fourteen (14) days before rent is due for violations involving services other than essential services, or the Landlord has no notice before rent is due which provides a reasonable opportunity to make emergency repairs necessary for the provision of essential services. No modification, change, or cancellation hereof shall be valid unless in writing and executed by all parties hereto.

**33. PROVISIONS:** The provisions of this Rental Agreement shall be binding upon and inure to the benefit of the Landlord and the Tenant, and their respective successors, legal representatives, and assigns.

**34. SUBORDINATION:** Tenant's rights are subject to any bona fide mortgage which now covers said premises and which may hereafter be placed on said premises by Landlord. Tenant shall upon request by Landlord execute a subordination of its rights under this Rental Agreement to any mortgage given by Landlord hereunder, whether to secure construction or permanent or other financing. Resident shall upon request by Landlord promptly execute a certification of good standing certifying the terms of this Rental Agreement, its due execution, the rental provisions hereof, or the terms of amendments hereto, if any, and any other information reasonably requested.

**35. JOINT RESPONSIBILITY:** If more than one (1) Tenant executes this Rental Agreement, the responsibility and liabilities herein imposed shall be considered and construed to be joint and several, and the use of the singular shall include the plural.

**36. AGENT'S ADDRESS FOR COMMUNICATIONS:** All notices, requests, and demands unless otherwise stated herein, shall be addressed and sent to:

New Heights Property Management  
237 Old Summerville Road Suite F  
Summerville, SC 29486

843-883-6130 (phone and fax)  
customerservice@newheightspm.com (email)

**37. CAPTIONS:** Any heading preceding the text of any paragraph hereof is inserted solely for the convenience of reference and shall not constitute a part of this Rental Agreement, nor shall they affect its meaning, construction or effect.

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**38. FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax

or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures or initials (written or electronic) and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**39. MEGAN'S LAW:** The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

**40. ENTIRE AGREEMENT.** This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. **TIME IS OF THE ESSENCE WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.**

**41. NON-RELIANCE CLAUSE:** Both Tenant and Landlord hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

**42. PROPERTY MANAGEMENT:** Agent is the authorized representative of Landlord/Owner for the purposes of managing Property in accordance with a separate management agreement. Tenant agrees to communicate only with Agent on all issues relating to or arising out of this Lease Agreement, unless expressly authorized to do so, in writing, by the Agent. The termination of the management agreement shall not terminate this Residential Rental Agreement.

**43. LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:** See Lead-Based Paint Disclosure Addendum attached (only applies to most rental properties built before 1978).

**44. ADDITIONAL TERMS:**

No smoking in any building on the property, no animals without written approval of Landlord. Rent payments in cash will not be accepted. Sprinkler System is Locked Out.



WHEREFORE, the parties have executed this Rental Agreement or caused the same to be executed by their authorized representative, the day and year first above written.

**THIS RENTAL AGREEMENT** supersedes all prior written or oral agreements and can be amended only through a written agreement signed by both parties. Provisions of this Rental Agreement shall bind and inure to the benefit of the Landlord and to the Tenant and their respective heirs, successors, and assigns. **TENANT AGREES TO RECEIVE COMMUNICATIONS FROM LANDLORD AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.**

**THE FOLLOWING ADDENDUMS ARE ATTACHED AND CONSIDERED A PART OF THIS LEASE AND SUPERCEDE ANY PORTIONS OF THE LEASE IN CONFLICT WITH THE ADDENDUMS TERMS:**

Tenant Handbook  
 Drug and Crime  
 Other Addendums  
 As-Is Addendum

Move-Out Instructions  
 Animal Rent  
 Lead Based Paint Addendum  
 \_\_\_\_\_

 [ ] [ ] [ ] [ ] [ ] TENANTS AND [  ] AGENT HAVE READ THIS PAGE.

## ONLINE RENT COLLECTION ADDENDUM

This ADDENDUM dated 12/10/2018 , is attached to and becomes a part of a Residential Rental Agreement dated 12/10/2018 , between the TENANT and LANDLORD.

LANDLORD may make available to TENANT the ability to pay rent through an online Tenant Portal. The Tenant Portal is provided by a third-party vendor who has a separate agreement with LANDLORD to make this service available. At the direction of the South Carolina Real Estate Commission, the following information about the TENANT PORTAL is provided to the TENANT:

Vendor Name: Jack Henry & Associates

Address: 663 W Hwy 60, Monett, MO 65708

Phone Number: 417-235-6652

Email Address: epspartnersupport@jackhenry.com

Approximate processing time: 3 to 5 Business Days

Fees to TENANT: \$2.00 at this time

By signing below, TENANT(S) acknowledges and consents that any payments TENANT(S) make using the Tenant Portal are processed through the third-party vendor identified above and understands that the funds will not be placed into LANDLORD's trust account until remitted to LANDLORD.

Tenant [Signature]

Date 12/10/2018

Tenant \_\_\_\_\_

Date \_\_\_\_\_

Tenant \_\_\_\_\_

Date \_\_\_\_\_

Tenant \_\_\_\_\_

Date \_\_\_\_\_

Landlord Lisa Richard Date 12/10/18

New Heights Property Management  
237 Old Summerville Road Suite F  
Summerville, SC 29486  
843-883-6130

## FILTER PROGRAM ADDENDUM

Tenant: Bethany Alaha Rich  
Address: 169 Decatur Dr, Summerville, SC

This ADDENDUM dated 12/10/2018 is attached to and becomes a part of a Residential Rental Agreement dated 12/10/2018, between the TENANT and LANDLORD.

Number of Filters: 1

Sizes of Filters: 20x30x1

**COST OF FILTERS:** All filters will be provided for a flat cost of \$10/month. This will be charged monthly and is payable with the monthly rental payment on the 1st of each month.

**A/C AND HEATING SYSTEM FILTER PROGRAM:** TENANT is responsible for replacing all A/C and heating system filters at the property on a quarterly basis. The only filters to be used at the property will be provided by LANDLORD and will be mailed directly to the property approximately every 90 days. TENANT shall properly install the filter within two (2) days of receipt. TENANT hereby acknowledges that the filters are dated to verify replacement and are subject to inspection by LANDLORD upon reasonable notice. If at any time TENANT cannot properly or timely install a filter TENANT shall immediately notify LANDLORD in writing. TENANT's failure to properly and timely replace the filters is a material breach of this agreement and LANDLORD shall be entitled to exercise all rights and remedies it has against TENANT and TENANT shall be liable to LANDLORD for all damages to the property, A/C or heating system.

Tenant(s): Bethany Alaha Rich Date: 12/10/2018

Tenant(s): \_\_\_\_\_ Date: \_\_\_\_\_

Landlord: Lisa Richard Date: 12/10/18

### Value To You:

Cost: \$10/month. You receive 3 filters (of each size) per quarter, to use over the 3 month period.

Cost of average filter = \$9.99 + tax x 1 filter + (gas,time, etc) = \$10.84 + (time, gas, etc)

Average utility bill for 3 months (\$140/month) = \$420

Average savings from changing filters on schedule = 5-10%

\$420 x 5% = \$21 savings over 3 months

\$10.84 Cost of filters + \$21 savings in utilities = \$31.84 Cost without service vs. \$30 with filter service (every 3 months)

NEW HEIGHTS PROPERTY MANAGEMENT "AS IS" LEASE ADDENDUM

This Lease Addendum made at Summerville, SC, dated 12/10/2018, between:

(hereinafter called "TENANT"), and New Heights Property Management (hereinafter called "LANDLORD"), for the property located at:

169 Decatur Drive, Summerville, SC 29486-5333

This addendum shall be attached and considered a part of the lease and supercede any portions of the lease terms contained herein:

**TERMS:**

Tenant accepts property in "as is" condition and agrees that, *unless there is an agreement between parties in writing:*

1. No cosmetic or minor repairs will be completed before or upon possession of premises by tenant
2. Landlord will be required to remedy only those items mandated by statute, ordinance, or homeowner association, OR at the request of the homeowner.

TENANT 1 Bethany Riem TENANT 2 \_\_\_\_\_  
 DATE: 12/10/2018 DATE: \_\_\_\_\_  
 TENANT 3 \_\_\_\_\_ TENANT 4 \_\_\_\_\_  
 DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

**\* EACH TENANT MUST SIGN AND DATE BELOW AND FILL OUT PHONE/EMAIL.**

TENANT 1 Bethany Rick TENANT 2 \_\_\_\_\_  
Phone 509-818-0396 Phone \_\_\_\_\_  
E-mail bethanyrick@gmail.com E-mail \_\_\_\_\_  
Date: 12/10/2018 Date: \_\_\_\_\_

TENANT 3 \_\_\_\_\_ TENANT 4 \_\_\_\_\_  
Phone \_\_\_\_\_ Phone \_\_\_\_\_  
E-mail \_\_\_\_\_ E-mail \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_

AGENT: Lisa Richard  
Date: 12/10/18

EXHIBIT B

NEW HEIGHTS PROPERTY MANAGEMENT LEASE ADDENDUM

This Lease Addendum made at Summerville, South Carolina, dated 12/23/2019, between:

Bethany Aloha Rich

(hereinafter called "TENANT"), and New Heights Property Management (hereinafter called "LANDLORD"), for the property located at:

169 Decatur Dr, Summerville, SC 29486-5333

This addendum shall be attached and considered a part of the lease and supercede any portions of the lease terms contained herein:

TERMS: owner agrees to Dec rent rate and Jan rent rate with \$100 additional rent, tenant is to vacate by 1/31/2020 and keys turned in by 5pm 1/31/20. December rent is to be current by close of business 12/20/19

<fullName> <signature> <date>  
<fullName> <signature> <date>  
<fullName> <signature> <date>  
<fullName> <signature> <date>  
<fullName> <signature> <date>  
<fullName> <signature> <date>

Bethany Rich *[Signature]* 12/23/2019

ELECTRONICALLY FILED - 2020 Oct 16 4:43 PM - BERKELEY - COMMON PLEAS - CASE#2020CP0800718

EXHIBIT C



Barabra >

Tue, Feb 11, 8:07 AM

Call me to discuss your email please

Tue, Feb 11, 1:39 PM

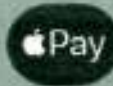
Jameson can be available to talk around 4:30 today.

Great. Can you send me his number

I would prefer to have a conversation together so that we are all on the same page. There is a



iMessage





Barabra >



I would prefer to have a conversation together so that we are all on the same page. There is a loan in the approval process right now with him as a co-signer.

Do you want to 3 way us

Yes that will work. Does 4:30 work for you?

Yes

Ok.



iMessage





Barabra >

Ok.

Tue, Feb 11, 4:37 PM

Ready when you are?

Call me

Ok would you like me to call you first and then Jameson?

Whatever works

Ok. I'll call him first.

Wed, Feb 12, 7:55 AM



iMessage





Barabara >

Wed, Feb 12, 7:55 AM



Sent you an email regarding our conversation yesterday.

I got it. I spoke with the owners last night and they will wait for their decision depending on the lenders letter

Fri, Feb 14, 11:43 AM

Ok. Did they say if they knew where in the process of eviction they were? I haven't received



iMessage





Barabara >

Fri, Feb 14, 11:43 AM



Ok. Did they say if they knew where in the process of eviction they were? I haven't received anything in the mail. So assuming there's still some time. I'm guessing the lender will know today as Jameson had his credit freeze removed which is what was holding this back.

I don't know anything about the eviction.



iMessage





Barabara >

I don't know anything about the eviction. Seller said as soon as we have paperwork she will stop it

Sat, Feb 15, 11:06 AM

What paperwork are they looking for. Last we spoke it was a preapproval letter.

Yes. That's what I need

Ok.

Delivered



iMessage

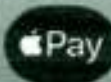


EXHIBIT D



February 15, 2020

Dear: Bethany Rich & Jameson Johnson

We are pleased to inform you that you are Pre-Approved for a FHA loan for the property located at 169 Decatur Dr., Summerville, SC 29486.

Our pre-approval is based after the review of your income, credit and asset information provided by you. This information is deemed reliable but will still need to be reviewed by underwriting. This pre-approval letter does not constitute final loan approval or commitment to rate, fees or term.

Should you have any questions or concerns please do not hesitate to contact me at: 803-785-3704.

I look forward to working with you on the purchase of your new home!

Sincerely,

Tim Douglas  
803-785-3704  
NMLS # 181462  
Bay Equity LLC

**RECEIVED**

**Apr 28 2022**

**SC Court of Appeals**

Certificate of Counsel

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

Respectfully submitted,

*/s/ Jeffrey W. Kuykendall* \_\_\_\_\_

Jeffrey W. Kuykendall – Attorney at Law

S.C. Bar No. 102538

127 King St., Ste. 208

Charleston, SC 29401

Phone: (843) 790-5182

Facsimile: (866) 733-1909

Jwkuykendall@jwklegal.com

At Charleston, South Carolina

This the 28<sup>th</sup> day of February, 2022.