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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
)
 Ezekiel Grier,)
 Plaintiff/Defendant)
 vs.)
)
 Bernard Gill,)
)
)
 Defendant/Plaintiff)

IN THE MAGISTRATES COURT

CIVIL CASE NOS:
2022 CV4610300015; 2021 CV 4610303925

ORDER FOR IMMEDIATE POSSESSION
AND DISMISSAL OF NOTICE TO QUIT

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 CLERK OF COURT
 MAGISTRATE COURT

On January 6, 2022, this court held a hearing on the above listed case filed by Plaintiff, Bernard Gill, Notice to Quit (filed on December 27, 2021). Defendant, Ezekiel Grier, was present. Both Plaintiff and Defendant agreed during the hearing to have an Unlawful Ouster action filed by Ezekiel Grier (the Plaintiff in that action) hear contemporaneously (filed on Jan 3, 2022). The court heard testify by both Gill and Grier in their capacities as both Plaintiff and Defendant to these actions. The court granted a continuance until Tuesday, January 11, 2022 with the consent of both parties, to allow time to settle the action. This case was has not been settle and the court orders the following disposition of these actions.

The court finds that Plaintiff Gill gave written notice to the Defendant Grier on, about, or prior to December 1, 2021. The letter providing notice to Defendant Grier was acknowledged by Defendant Grier as having been received. There is no formal rental agreement between the parties and Defendant Grier (son in law of Plaintiff Gill), Defendant Gri'ers wife (Plaintiff Gill's daughter). The court finds as a matter of law that the term of the lease is the Statutory Default of a "month to month" lease, as provided in SC Code Ann. Section 27-40-310. The amount of rent is \$1000 USD. The court further finds that rent was not paid for the months of September, October, November, and December (and presumably January) as testified to by Plaintiff Gill and conceded by the Defendant Grier in that 'his wife deals with her father and he just gives her the money' (paraphrased).

Plaintiff Gill filed a Notice to Quit^{by} on December 27, 2021, however it was not served on the Defendant until January 6, 2022. Plaintiff Gill testified that he "boarded up the house" thus denying access to Defendant Grier after unsuccessfully trying to contact Defendant Grier and further that Plaintiff Gill believed the property to be "abandoned". Defendant Grier did provide a police report to the court which indicated that the house was boarded up and he was denied access on December 23, 2021.

Thereafter, Defendant Grier filed an Unlawful Ouster action on January 3, 2022, as the Plaintiff.

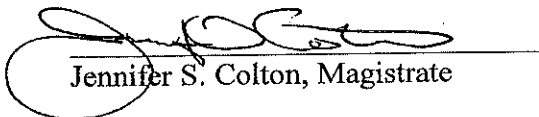
The court finds the following:

A Landlord Tenant relationship exists between the Plaintiff/Defendant. The court finds that Defendant Gill is lawfully a tenant with a possession interest in the property, and hereby dismisses the Notice to Quit. The Notice to Quit action was filed but not served prior to the Unlawful Ouster action, despite not being served until after the Unlawful Ouster action was initiated. The Plaintiff Gill did attempt to initiate eviction proceedings and attempt to comply with providing 30 days written notice to the Defendant Gill. The court further finds that the conduct of the Plaintiff does not meet the elements of retribution conduct and makes no further findings as to those damages because the notice to quit was filed *after* the Unlawful Ouster action. Further, the Unlawful Ouster occurred on December 23, 2021 (filed on January 3, 2022) after written notice to terminate the lease was provided to Defendant Grier.

The court finds that Defendant Gill's conduct constitutes an Unlawful Ouster and orders that the immediate possession of the property, located at 1734 Heatherhill Road, Rock Hill, South Carolina, be returned to Plaintiff Grier.

IT IS SO ORDERED.

January 12, 2022


Jennifer S. Colton, Magistrate