

November 23, 2015 City Council Rental Housing Suspension Hearing

**212 Edgewood Avenue – William Kelley**

This is a Show-Cause Hearing with William Kelley of 502 Fairway Lakes Road in Greenwood. Mr. Kelley owns a rental house at 212 Edgewood Avenue. Mr. Kelley is guilty of an occupancy violation for the rental house at 212 Edgewood Avenue. This violation was validated after Kelley was issued a summons to appear in Clemson Municipal Court and settled the case prior to going before the Judge. As a result, the property at 212 Edgewood Avenue is considered a nuisance property due to the occupancy violation. Mr. Kelley has exhausted his due process rights for an appeal of this violation.

This Show-Cause Hearing is required by City of Clemson Code of Ordinances, Sections 13-62 and 13-63 (attached). This hearing will allow Mr. Kelly, City staff and any other parties to present information they believe to be relevant to City Council in determining whether Mr. Kelley should be allowed to have a permitted rental property at 212 Edgewood Avenue.

This is not a hearing of appeals from Municipal Court or a hearing to determine the guilt or innocence of the occupancy violation. That has been proven. This is a hearing under Section 13-63 to determine if the rental housing permit for this property should be continued or suspended for a period of time. Any information presented at this hearing disputing or questioning the validity of the occupancy violation is deemed to be irrelevant and shall not be presented as evidence.

**History:** This property first came to the attention of the City in 2010 when the property was discovered to be renting without a license. The owner said at that time that he would either be selling the property or that only his sons would be living there. In October 2012 there was a litter and noise complaint during which police discovered three people were living there. The property had not been registered as a rental property and appeared to exceed the occupancy level. Records show that after he was found to be in non-compliance for the second time the owner registered the property into the rental housing program in November 2012 and, I believe, said that two of the tenants were relatives. Then in 2013 the owner was issued a court summons for failure to have his property re-inspected.

**Occupancy Violation:** In October of 2015, during the process of responding to another noise complaint, Chief Dixon was told that four people were living in the house. The property has a maximum occupancy of two unrelated occupants as noted within Section 19-404, City of Clemson Zoning Ordinance. This occupancy is stated on the rental housing agreement between Mr. Kelley and the City and it is well-documented that legal occupancy levels were discussed with the property owner on several occasions. When this violation was brought to the attention of Planning and Codes, a search warrant was granted and the occupancy complaint was investigated by staff. The property was found to have six bedrooms. Four tenants admitted they lived full-time on premises. One of the bedrooms was in the process of being remodeled by the property owner and property manager. When I asked the tenants if they thought the owner was aware how many people were living there they said "yes." When I asked why they thought the owner was aware they said, "Because he has been in the house several times."

Based on this evidence the owner was cited for an occupancy violation and a summons to appear in court was issued. In the process of preparing the case it was discovered that the lease for 2013-2014 listed the occupancy for the dwelling as four and tenants stated that four people were living in the house during this time period. The owner admitted to guilt for the current violation (he plead *nolo contendere* which Judge Barnes entered as a guilty plea) and agreed to a \$5000 fine. The City attorney agreed to allow/require the tenants to pay \$2000 of the fine and the balance of the fine, according to the City Attorney, was paid

either by the property owner or split between the property owner and the Property Management company (Clemson Rentals).

City code holds the property owner responsible for meeting code. It is the responsibility of the property owner to make sure their management company is following the rules. For the past several years the property owner was receiving rent of \$2200 per month. The average bedroom rental in Clemson is \$550. Four different people were paying rent. It is hard to believe that the property owner and property manager were unaware of the occupancy violation. If the property owner feels they were misled or suffered damages by the action of the management company then that is a civil matter between those two entities and is not of consequence to this hearing.

Just to recap, offenses for which the property owner is responsible:

2010 Renting without a license.

2012 Renting w/out license and possible occupancy violation discovered due to noise and litter complaint.

2013 Failure to inspect.

2014 Exceeding the occupancy guidelines by renting to four tenants

2015 Exceeding the occupancy guidelines by renting to four tenants discovered due to noise complaint

**Recommendation:** This is my first show cause hearing. To assist in my recommendation I began by researching previous occupancy violations and show cause hearings and I corresponded with my predecessor. I also reviewed Council minutes from previous hearings. The research lead me to this:

Had this property had a different history staff would most likely recommend a probation. However, due to the property owner's consistent disregard for the rules of the rental housing program and only after repeated attempts to grant the property owner the benefit of doubt and offer warnings, staff recommends that the rental license for 212 Edgewood be suspended for a period of 11-months.

The owner told staff, the City attorney, and the tenants that he is selling the property. He told the City attorney that he has a closing date of December 4<sup>th</sup>. However, when asked if he could provide the City with the name of the buyer (so the buyer could be made aware of the show cause hearing and be made aware of the legal occupancy of the property) Mr. Kelley changed his story and said he did not have a buyer. As stated in the agreement Mr. Kelley made with the City Attorney (see attached), the current lease expires December 31, 2015. If Mr. Kelley is to be taken for his word and sells the property on December 4<sup>th</sup> then there is no penalty realized by the revocation of his license - other than his part of the fine paid to the court which is estimated to be \$1500 and in no case is more than \$3000.

When measured against his unlawful financial gain of \$1100 per month for a period of at least two years (\$26,400) the \$1500 penalty meted during his plea bargaining does not seem appropriate or in keeping with the penalties Council has levied in similar cases. Therefore, staff recommends that revocation of the license begins at the expiration of the lease in force (which means the revocation would begin January 1, 2016) and continue until November 30, 2016. The term of 11-months takes into account the approximate loss of one month rent the property owner has already been fined but this recommendation does not seek penalties for the prior years of willfully violating the occupancy rules. This recommendation is in keeping with the pattern of rental housing penalties recommended by the Zoning and Codes Administrator over the last decade, complies with the rules of the Rental Housing Ordinance, and is the same penalty Council has handed down at the last three revocation hearings.

**Chapter 13**  
**Article III. Rental Housing Regulations**

**Sec. 13-59. Property Owner, Person in Charge, and Occupant.**

- c) Property Owner, the Person in Charge, and Occupants shall be liable for occupancy violations within rental residences of their control or in which they are located.

**Sec. 13-62. Requirement for Suspension Hearings**

City Council shall hold Suspension Hearings as follows:

- (1) Occupancy. Violation of occupancy regulations shall be grounds for declaring the rental unit a nuisance property and a suspension hearing date will be established by City Council within 60 days of the offense. The Zoning and Codes Administrator shall issue a notice by certified mail or any other means available to ensure delivery to the Property Owner and Person in Charge noting the property is considered a nuisance property and pending a suspension hearing. A copy of this notice shall be maintained by the Zoning and Codes Administrator.

**Sec. 13-63. City Council Hearing.**

- (a) The Zoning and Codes Administrator shall provide written notice to the Owner or Person in Charge of the residential rental unit by personal service, certified mail or any other means available. The written notice shall include the fact that the property is scheduled for a suspension hearing before City Council for the purpose of determining the status of the permit. The notice shall state the time and place at which the hearing is to be held which shall be at a regular or special Council meeting. The notice shall also contain a brief statement of the reasons for suspension hearing and a copy of the applicable provisions of the Code of Ordinances.
- (b) The Zoning and Codes Administrator shall provide City Council with a written report outlining the circumstances for declaring the rental property as a nuisance property. All documents relating to the property shall be available prior to the hearing for review by all parties.

**Sec. 13-65. Effect of Revocation.**

Upon the commencement of revocation, the property shall be secured and no person, firm or corporation shall operate or rent/lease to another for residential occupancy any dwelling unit or rooming unit during such time that the rental housing permit for such unit is revoked.

THE CITY OF CLEMSON	]	
	]	SETTLEMENT AGREEMENT
VS	]	OCCUPANCY VIOLATIONS
	]	UNIFORM ORDINANCE SUMMONSES
WILLIAM R. KELLEY, ROSS	]	NUMBERED 3295,3296,3297,3298,3299
LOVETTE, JOSH HUTCHINSON,	]	
AUSTIN MOGY, AND WILL	]	
GRATTAN	]	

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Whereas all of the signatories hereto are involved in some way with the property located at 212 Edgewood Drive, Clemson, South Carolina; and

Whereas, the owner of the property and the four tenants of the property have been cited for violating the City of Clemson's occupancy requirements;

Now therefore, in full settlement of these charges, the following signatories hereby agree as follows:

1. The owner of the property, William R. Kelley (hereinafter referred to as Owner), will plead nolo contendere to the charge of violating the City of Clemson's Ordinance Section 13-39 ( c ) in that the property was alleged to be occupied by more than the two occupants allowed in the City's Zoning Ordinance (See Table Number 19-304, Clemson Municipal Ordinances).
2. Owner shall pay a fine of \$5,000.00, which amount shall include court costs.
3. The four tenants, Ross Lovette, Josh Hutchinson, Austin Mogy, and Will Grattan (hereinafter referred to as Tenants), shall release \$2,000.00 of their security deposit, now in the possession of 1<sup>st</sup> Clemson Rentals, to Owner. The remaining \$200.00 of the Tenants' security deposit shall be returned to Tenants.
4. 1<sup>st</sup> Clemson Rentals shall deposit \$2000.00 of their own money into the security deposit account for 212 Edgewood Drive, and said amount shall be used toward any required security deposit damages at the end of the lease term.
5. The Residential Rental Agreement between Ross Lovette and 1<sup>st</sup> Clemson Rentals dated March 13, 2015, shall be amended as to its ending date, which ending date shall now be December 31, 2015, rather than July 31, 2016. No rent or any other fees shall be due after those owed through December 31, 2015.
6. All of the present occupancy violation charges against the four Tenants shall be nolle prossed by the Clemson City Attorney and the City acknowledges that there will be four tenants in the property through December 31, 2015 (but not after).

7. Owner and 1<sup>st</sup> Clemson Rentals agree not to take or extend any legal action against Tenants for anything relating to this ordinance violation action. They also agree not to execute any eviction proceedings from the date of this signed Agreement until December 31, 2015, unless Tenants are in violation of all or part of the current lease, excluding any occupancy violation, with the understanding that the current lease will terminate on December 31, 2015. All other rights of the current lease are enforceable until December 31, 2015.
8. The City of Clemson will not pursue any occupancy proceedings against any of the signatories to this Agreement unless illegal occupancy continues after December 31, 2015; except that Owner understands that this case may be brought before the Clemson City Council pursuant to Clemson Municipal Ordinance 13-62.
9. 1<sup>st</sup> Clemson Rentals shall revoke Notice to Show Cause dated October 9, 2015, which was received by Tenants on or about October 15, 2015.

This Agreement has been signed and witnessed on the dates given below as follows:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
William R. Kelley, Owner

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Ross Lovette, Tenant

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Josh Hutchinson, Tenant

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Austin Mogy, Tenant

Date: \_\_\_\_\_

\_\_\_\_\_  
Will Grattan, Tenant

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin Cope for 1<sup>st</sup> Clemson Rentals

Date: \_\_\_\_\_

\_\_\_\_\_  
Kay Kirkley Barrett, Clemson City  
Attorney

Date: \_\_\_\_\_