

IN THE CIRCUIT COURT OF JOHNSON COUNTY, ARKANSAS
CIVIL DIVISION

Ken Skrien

PLAINTIFF

CASE NO. 36CV-24-165

v.

Todd Anthony Matyjasik

Samantha Presley Matyjasik

Abigail Johnson

Faith Johnson

DEFENDANTS

MOTION FOR JUDGMENT BY DEFAULT

KEN SKRIEN ("Plaintiff"), pro se, pursuant to Ark. R. Civ. P. 55, moves for a judgment by default against Defendants Todd Anthony Matyjasik, Samantha Presley Matyjasik, Abigail Johnson, and Faith Johnson because service has been perfected and obtained on all of these four individuals including a Warning Order, and other methods of service of process on the Defendants, and they have failed to file an Answer in the case and, therefore, Plaintiff is entitled to a judgement by default against these four Defendants.

MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR
JUDGMENT BY DEFAULT

Comes now Ken Skrien (“Plaintiff”), pro se, and hereby states the following:

Plaintiff has complied with all the requirements to properly serve these four Defendants and, therefore, since the Defendants have not filed a timely Answer, the Plaintiff is entitled to a default against these Defendants.

“In deciding whether to enter a default judgment, the court should take into account the factors utilized by the federal courts” (Ark. R. Civ. P. 55 Addition to Reporters Note, 1990 Amendment)

The *Eitel*¹ factors strongly favor a default judgment. Defendants have had significant time to defend themselves and file an Answer. Defendants were aware in June of 2024 that Plaintiff intended to take legal action if they did not surrender possession of the Property immediately. Complaint was filed with this Court on July 15, 2024. Defendants were notified via text and email but

¹ Eitel v. McCool, 782 F.2d at 1471-72.

did not acknowledge such. Service by Warning Order commenced on September 11, 2024 (Exhibit I), and Defendants have had nearly four months since first publication to file an Answer or otherwise respond. Should this Court not grant Plaintiff's motion for judgment by default, Plaintiff will likely be without other recourse for recovery of lost rental income. As such Plaintiff will be prejudiced if a judgment by default is not entered.

The second and third *Eitel* factors consider the merits and sufficiency of the case and Complaint. Plaintiff, as sole Settlor, Trustee and Beneficiary of the Revocable Trust DCA (EXHIBITS A and B) is the lawful owner of the Property as evidenced by the attached Warranty Deed (EXHIBIT K).

On June 1, 2024 Defendants remained in possession of the Property in holdover from previously agreed upon arrangements, thus preventing Plaintiffs next tenant from moving in as scheduled (EXHIBIT F).

Defendant Samantha Matyjasik was served Notice to Vacate on the 27th day of June, 2024, by the Johnson County Sheriffs Office (Exhibits C, D, E).

On the 12th day of July, 2024 a representative of Arkansas Department of Human Services, Division of Children and Family Services was present on the Property. A failed drug screen from

this visit is attached (EXHIBIT M) to document the continued holdover of the Property on this date, over a week after the three day period provided in the Notice to Vacate had expired, and six weeks after Defendants agreed upon end of tenancy.

On the 29th day of July, Kristin Oteri Kitchens emailed Plaintiff to cancel her planned rental of the Property due to this holdover (EXHIBIT F). Plaintiff suffered a minimum of \$7,800 in monetary damages as a result of the loss of this rental contract. Both Plaintiff and Ms. Kitchens had expected her tenancy to last well beyond that term so Plaintiffs actual losses are likely well in excess of that \$7,800 contract.

When Defendants did finally abandon the Property, it was left in abysmal condition (EXHIBITS N-1 through N-7). The condition of the Property shows damages well beyond simple neglect. This as well as the deliberate holdover despite knowledge of the Property already being rented to a new Tenant, and Defendants continued choice to disregard this Complaint clearly demonstrate Defendants bad faith and malicious intents. Accordingly Plaintiff seeks to recover twice the actual damages (\$15,600) plus costs pursuant to Arkansas Code § 18-17-704.

The evidence at hand strongly favors a judgment in favor of Plaintiff, and Defendants have willfully chosen not to provide any defenses or mitigating factors that may hypothetically exist.

Given the malicious and deliberate manner in which Defendants held over possession of the Property and continue to ignore this case, Plaintiffs request for \$15,992.02 (\$15,600 plus costs (see EXHIBIT L-1 through L-7, EXHIBIT I)) is a modest and reasonable judgment in accord with the fourth *Eitel* factor.

The fifth *Eitel* factor explores potential challenges to the facts of the case. In the matter at hand a substantial amount of the evidence is Federal, State of Arkansas or Johnson County records outside of and beyond the scope of this Complaint, all supportive of Plaintiffs case. (EXHIBITS B, D, G, H, K, L-1 through L-4, M). Government records clearly document Plaintiffs right to bring suit as well as Defendants willful and unlawful holdover of Plaintiffs Property.

The sixth factor examines possible causes for Default. The record clearly shows Defendants are fully aware of the Complaint brought against them. Court transcripts from September 11, 2024 reference Defendants phone call to the Clerks office, claiming they 'just found out about it this morning and therefore could not attend.' However, nearly two weeks prior, Defendant Samantha Matyjasik subscribed to ToddLivedHere.com (where Complaint was clearly posted) (EXHIBIT J). Defendants continued lack of respect or concern for the law in relation to Court proceedings

mirror their lack of respect and concern for Plaintiffs Property and livelihood. Defendants have defaulted by choice.

The seventh and final factor reflects on an overall policy favoring decision on merits. In the matter at hand, the evidence is overwhelmingly in favor of the Plaintiff. A judgment by default, backed by substantial evidence with no challenge thereof is fully merited.

CONCLUSION

Plaintiff respectfully requests that the Court enter default judgment in his favor that awards at least \$15,992.02.

PLAINTIFF

1072 Highway 215

Oark, AR 72852

(786) 548-2453

legal+eviction.matyjasik@mettlemeddle.com

EXHIBIT H - 2nd Returned Letter


Tracking Number: Exhibit H-1: Tracking information provided by [USPS.com](https://usps.com)
9589071052702018600231

 Copy  Add to Informed Delivery

Latest Update

Your item could not be delivered on October 23, 2024 at 1:08 pm in OARK, AR 72852. It was held for the required number of days and is being returned to the sender.

Get More Out of USPS Tracking:

 USPS Tracking Plus®

Alert

Unclaimed/Being Returned to Sender

OARK, AR 72852
October 23, 2024, 1:08 pm

Forward Processed

LITTLE ROCK, AR 72206
September 24, 2024, 11:21 am

Forwarded

OARK, AR
September 7, 2024, 12:04 pm

Departed USPS Regional Facility

LITTLE ROCK AR DISTRIBUTION CENTER
September 6, 2024, 9:17 am

Arrived at USPS Regional Facility

LITTLE ROCK AR DISTRIBUTION CENTER
September 5, 2024, 9:10 pm

Departed Post Office

CLARKSVILLE, AR 72830
September 5, 2024, 4:38 pm

USPS in possession of item

CLARKSVILLE, AR 72830
September 5, 2024, 11:20 am

Exhibit H-2: Envelope as returned to sender

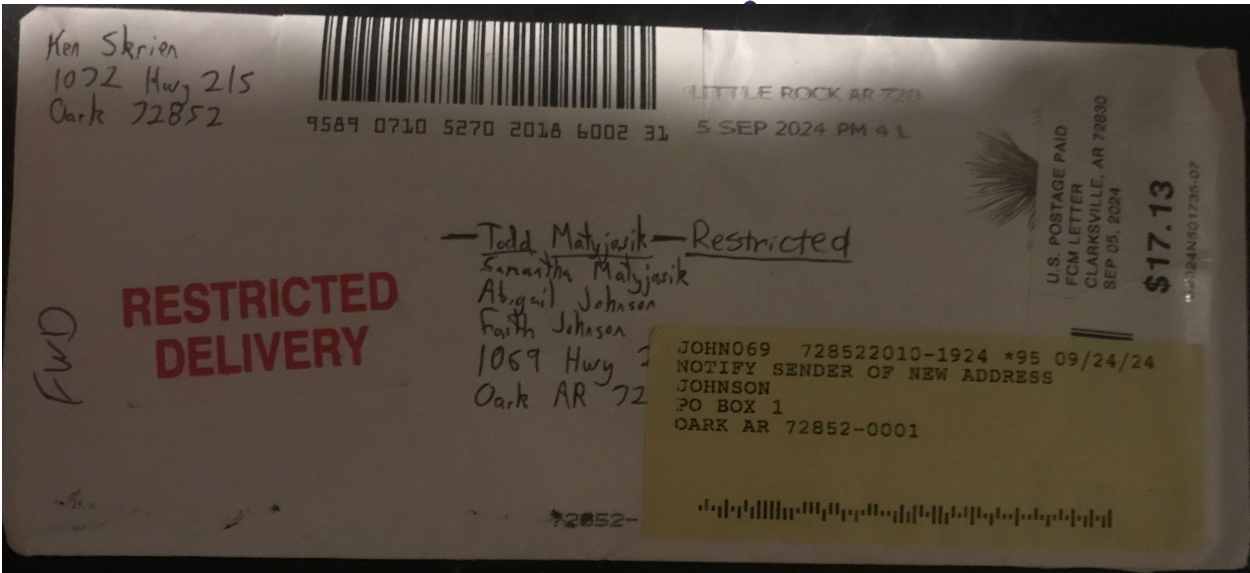


EXHIBIT K - Warranty Deed

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PREPARED BY:
CURRAN'S ABSTRACT & TITLE, INC
210 WEST MAIN
CLARKSVILLE, AR 72830



L202102369
JOHNSON CO. AR. FEE \$35.00
PRESENTED & RECORDED
05/20/2021 14:46:39
MONICA KING
COUNTY CLERK
BY: MISTI FORD
DEPUTY CLERK
BK: 1 2021010
PG: 990 - 994

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That I, **JERRY ATKINS, A SINGLE PERSON, GRANTOR**, for the consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration, in hand paid by **KENNETH BERESKI, II, TRUSTEE OF THE REVOCABLE TRUST DCA, DATED JULY 6, 2018, GRANTEE**, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said **GRANTEE**, and unto its successors and assigns forever, the following lands lying in the County of **Johnson** and State of **Arkansas**, to wit:

SEE ATTACHED EXHIBIT "A"

THIS CONVEYANCE IS MADE SUBJECT TO ANY MINERALS THAT HAVE BEEN HERETOFORE CONVEYED OR RESERVED IN PRIOR CONVEYANCES AND ANY AND ALL EASEMENTS OR RIGHTS OF WAY OF RECORD OR PHYSICALLY IN EXISTENCE ON, OVER, OR ACROSS THE ABOVE DESCRIBED LANDS.

To have and to hold the same unto the said **GRANTEE**, and unto its successors and assigns forever, with all appurtenances thereunto belonging. And I hereby covenant with said **GRANTEE** that I will forever warrant and defend the title to the said lands against all claims whatsoever.

And I, the **GRANTOR**, for and in consideration of the said sum of money, do hereby release and relinquish unto the said **GRANTEE** all my rights of dower, curtesy and homestead in and to the said lands.

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EXHIBIT "A"

PART OF THE NW/4 OF THE NW/4, AND A PART OF THE NE/4 OF THE NW/4, ALL IN SECTION 19, TOWNSHIP 12 NORTH, RANGE 24 WEST, MORE PARTICULARLY DESCRIBED AS BEGINNING AT A POINT SOUTH 89 DEGREES 44 MINUTES 04 SECONDS EAST 500.00 FEET FROM THE NORTHWEST CORNER OF SAID NW/4 OF THE NW/4, THENCE SOUTH 660.0 FEET, THENCE SOUTH 89 DEGREES 44 MINUTES 04 SECONDS EAST 660.0 FEET, THENCE SOUTH 99.30 FEET, THENCE SOUTH 89 DEGREES 44 MINUTES 04 SECONDS EAST 76.57 FEET, THENCE NORTH 759.30 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF SAID NE/4 NW/4, THENCE NORTH 89 DEGREES 44 MINUTES 04 SECONDS WEST 111.56 FEET TO THE NORTHWEST CORNER OF SAID NE/4 OF THE NW/4, THENCE CONTINUING NORTH 89 DEGREES 44 MINUTES 04 SECONDS WEST 625.01 FEET TO THE POINT OF BEGINNING. CONTAINING AN AREA OF 11.333 ACRES MORE OR LESS.

EXHIBIT L page 1 of 5 - Court Costs

Summary of court and other eviction related costs

- Sheriffs Office Service Fee (\$50, EXHIBIT L-1)
- Initial Filing Fees (\$165, EXHIBIT L-2)
- Summons Fees (\$10, EXHIBIT L-3)
- Certified Mail (\$18.08, EXHIBIT L-4)
- Postcard Mailings (\$2.74+\$29.20 (73¢ each, 40 addresses), EXHIBITS L-5 and L-6)
- Newspaper Publication (\$91.70, EXHIBIT I)
- Printing costs (\$8.50, 10¢ page black and white (qty 53), 25¢ page color (qty 14)[no receipts provided by Johnson County Public Library])
- Domain name registration (\$1, EXHIBIT L-7)

EXHIBIT L page 2 - Court Costs

EXHIBIT L-1: Sheriff's Office Service Fee

FEES AND SERVICES		OFFICE OF THE SHERIFF		018761
Received of.....		Clarksville, Johnson County, Ark.....		6-25-24
FOR.....				\$ 500.00
CASH <input checked="" type="checkbox"/> CHECK <input type="checkbox"/>		Jimmy Stephens, Sheriff		
Amt. of Account				
Amt. Paid	500.00			
Balance Due				

By: *[Signature]*

EXHIBIT L-2: Initial Filing Fees

Customer Information	Transaction Information	Payment Summary
KEN SKRIEN	Date Received: 7/15/2024 Source Code: MAIL Return Code: MAIL Total Docs Received: 1	Total Fees: \$165.00 Total Payments: \$165.00

1 Payments	
Cash	\$165.00

3 Recorded Items	
(ARKANSAS S) ARKANSAS STATE TREASURY	Instrument #: M000030530 Date: 7/15/2024 10:45:06
Recording Fee 1st Page @ \$40.00	1 \$40.00
Additional Pages @ \$0.00	
(CIVIL CASE) CIVIL CASE	Instrument #: M000030531 Date: 7/15/2024 10:45:07
Recording Fee 1st Page @ \$110.00	1 \$110.00
Additional Pages @ \$0.00	
(COURT TECH) COURT TECHNOLOGY FEE	Instrument #: M000030532 Date: 7/15/2024 10:45:08
Recording Fee 1st Page @ \$15.00	1 \$15.00
Additional Pages @ \$0.00	

Comment
36 CV-24-165

EXHIBIT L page 3 - Court Costs

EXHIBIT L-3: Summons Fees

Monica King
Circuit County Clerk and Registrar
215 W Main St
Clarksville, AR 72830
479-754-2977

Johnson County Transaction #:46579
Receipt #: 46567
Cashier Date: 7/30/2024 13:35:54
(NAKESHIA)

Print Date:
7/30/2024 1:35:59 PM

Customer Information	Transaction Information	Payment Summary
KEN SKRIEN	Date Received: 7/30/2024 Source Code: MAIL Return Code: MAIL Total Docs Received: 1	Total Fees: \$10.00 Total Payments: \$10.00

1 Payments

Cash \$10.00

4 Recorded Items

(SUMMONS IS) SUMMONS ISSUED		Instrument #:M000030704 Date: 7/30/2024 13:35:54	From: To:
Recording Fee 1st Page @ \$2.50	1		\$2.50
Additional Pages @ \$0.00			
(SUMMONS IS) SUMMONS ISSUED		Instrument #:M000030705 Date: 7/30/2024 13:35:55	From: To:
Recording Fee 1st Page @ \$2.50	1		\$2.50
Additional Pages @ \$0.00			
(SUMMONS IS) SUMMONS ISSUED		Instrument #:M000030706 Date: 7/30/2024 13:35:56	From: To:
Recording Fee 1st Page @ \$2.50	1		\$2.50
Additional Pages @ \$0.00			
(SUMMONS IS) SUMMONS ISSUED		Instrument #:M000030707 Date: 7/30/2024 13:35:57	From: To:
Recording Fee 1st Page @ \$2.50	1		\$2.50
Additional Pages @ \$0.00			

Comment

EXHIBIT L page 4 - Court Costs

EXHIBIT L-4: Certified Mail



EXHIBIT L-5: Postcards

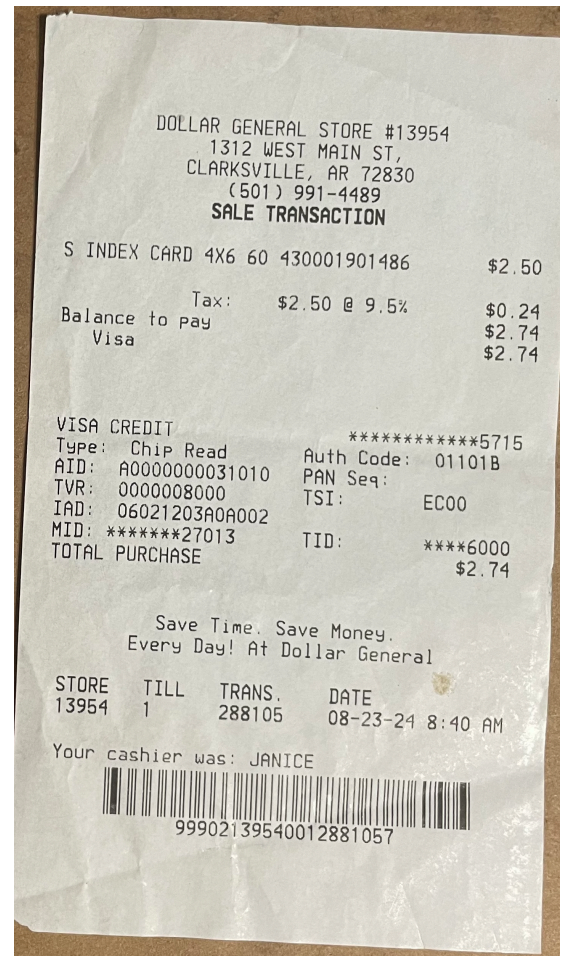


EXHIBIT L-6: Mailings to other known addresses (40)

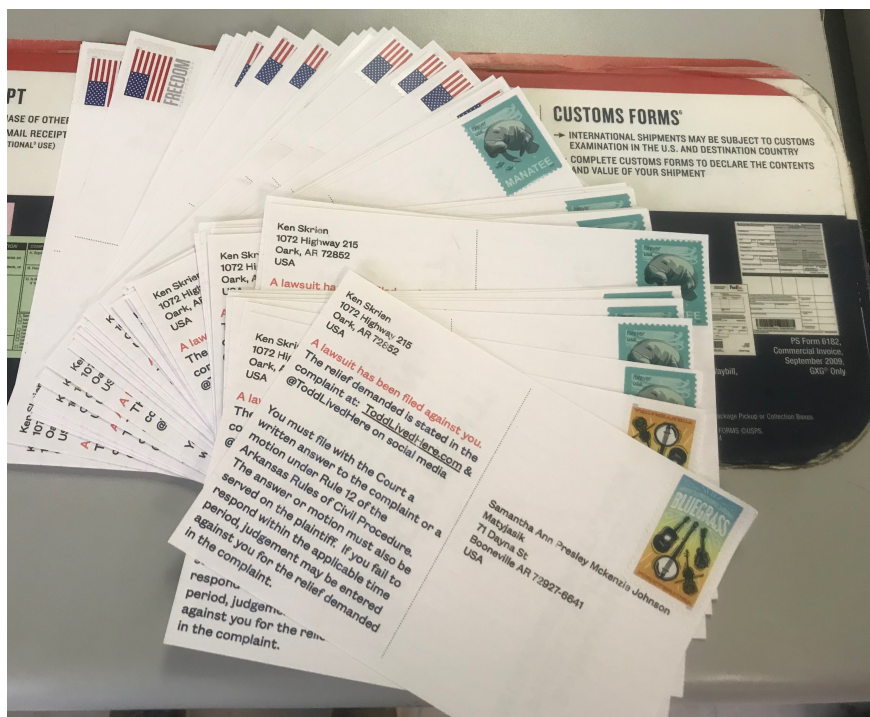


EXHIBIT L page 5 - Court Costs

EXHIBIT L-7: Domain Name (1 year)



IONOS Inc.
2 Logan Square, 100 N 18th St., Suite 400
Philadelphia, PA 19103
USA

2 Logan Square, 100 N 18th St. · Suite 400
Philadelphia, PA 19103 · USA

Ken Skrien

UNITED STATES

Invoice: [REDACTED]
Invoice Date: 08/09/2024
Customer ID: [REDACTED]
Contract ID: [REDACTED]

Help Center: ionos.com/help
My IONOS: my.ionos.com/invoices

Phone support: 1-484-254-5555
Service hours: 24/7

Please have your personal phone PIN available for quick and secure authentication when speaking with our agents. You can set and manage this by logging in to my.ionos.com.

Invoice

Billing period starting: 08/08/2024

Item	Service	Charges	Usage	Taxable Portion	Total
Contract: 102600074 - IONOS Instant Domain					
1	Domain .com	\$17.00 per year (incl. \$0.18 ICANN Fee)	12 mo.	\$0.00	\$17.00
	08/08/2024-08/08/2025 toddlivedhere.com				
2	Special Offer	Special Offer		\$0.00	\$-16.00
	Discount for line-item 1				
	Valid from 08/08/2024 to 08/08/2025				
Net Total					\$1.00
Net (non-taxable portion)					\$1.00
Net (taxable portion)					\$0.00
Tax					\$0.00
Total amount due					\$1.00
Please DO NOT send cash, check or money order					

The total amount due will be charged to your credit card within the next seven days, most likely in the next day or two. Thank you.

Do you have questions regarding this invoice?
Please refer to your [Help Center](https://ionos.com/help) or log in to my.ionos.com for further information.

EXHIBIT M - Drug Screen



Arkansas Department of Human Services Division of Children and Family Services Drug and Alcohol Screen Results

Client's Name Johnson CHRIS ID Number _____

Date Drug Screen Administered 7/12/24 Time Drug Screen Administered 11:45

Drug Screen Court Ordered? ☐ Yes ☒ No

DRUG SCREEN RESULTS

☐ Negative ☒ Positive ☐ Client refused screen (refusal of court ordered drug screens will be documented and shared with the court)

If results are positive, please place a checkmark next to the applicable drug listed below.

AMP	<input checked="" type="checkbox"/>	BUP	<input type="checkbox"/>	BZO	<input type="checkbox"/>	COC	<input type="checkbox"/>	FENTANYL	<input type="checkbox"/>	K2	<input type="checkbox"/>
METH	<input checked="" type="checkbox"/>	MTD	<input type="checkbox"/>	OPI	<input type="checkbox"/>	OXY	<input type="checkbox"/>	THC	<input type="checkbox"/>	TML	<input type="checkbox"/>

Specimen Temp: A ☐ Normal ☐ Abnormal

If abnormal, please comment:

Adulteration noted/Specimen altered: ☒ No ☐ Yes

Verified Prescription Drugs

Comments:

CHALLENGE INFORMATION

Client Challenged Drug/Alcohol Screen: ☒ No ☐ Yes

☐ Challenge sent to designated lab.

Date Challenge Sent to Lab via FedEx: _____

Identifier #: _____

☐ Client will secure own challenge screen at another qualified agency.

ALCOHOL SCREEN RESULTS

☐ Negative ☐ Positive

☐ Client refused screen (refusal of court ordered drug screens will be documented and shared with court)

Comments:

CLIENT SIGNATURE: _____

DATE: _____

DCFS STAFF SIGNATURE: [Signature]

DATE: 7/12/24

DCFS approved drug and alcohol screens; usage may vary by client need and county:
12 panel Bio-Cup, Alcoswabs (alcohol oral strips), EtG, 10 panel OralTox, K2 screen supplied by Premier Biotech

Material# 10131645
CFS-150 (R. 01/2017)

White: DCFS Staff/Client File

Yellow: Court

Pink: Client

EXHIBIT N-1 - Front Yard



EXHIBIT N-2 - Garage



EXHIBIT N-3 - Back Porch



EXHIBIT N-4 - Living Room



EXHIBIT N-5 - Bedroom



EXHIBIT N-6 - Bedroom 2

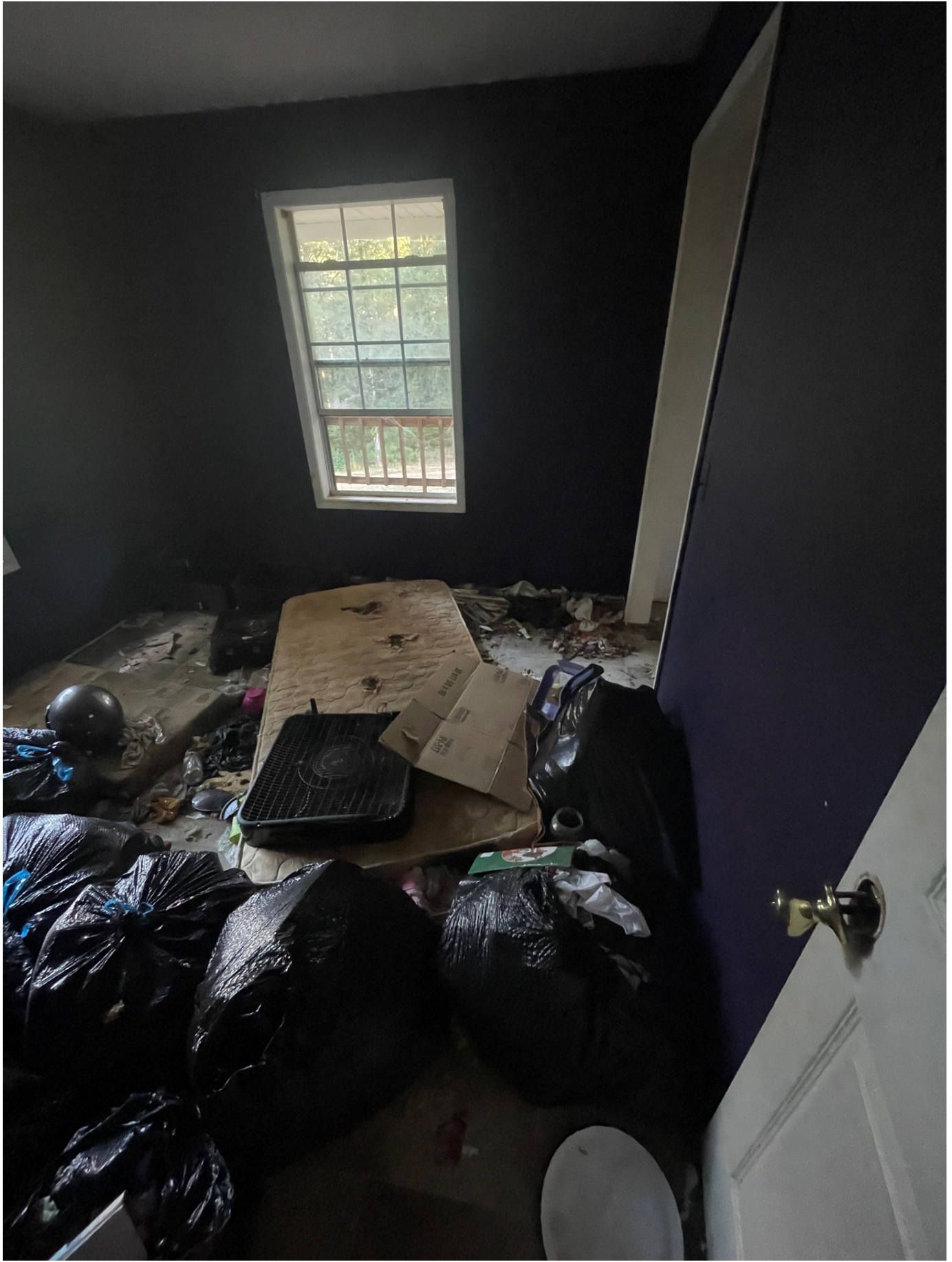


EXHIBIT N-7 - Bathroom

