

EVICTIONS

A landlord may bring an action of ejectment against a tenant in these situations:

1. When a tenant fails or refuses to pay rent when it is due.
2. When the term of the tenancy or occupancy has ended.
3. When the terms or conditions of the rental agreement have been violated.

Non-Payment of Rent

Rental agreements for residential property are governed by the South Carolina Residential Landlord & Tenant Act (hereafter Act). If a landlord wishes to file an eviction action against a residential tenant for non-payment of rent, the Act requires a five day notice before such an action can commence. Section 27-40-710(B) states:

"If rent is unpaid when due and the tenant fails to pay rent within five days from the date due or the tenant is in violation of Section 27-40-540, the landlord may terminate the rental agreement provided the landlord has given the tenant written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period. The landlord's obligation to provide notice under this section is satisfied for any lease term after the landlord has given one such notice to the tenant or if the notice is contained in conspicuous language in a written rental agreement. The written notice requirement upon the landlord under this subsection shall be considered to have been complied with if the rental agreement contains the following or a substantially equivalent provision:

'IF YOU DO NOT PAY YOUR RENT ON TIME

This is your notice. If you do not pay your rent within five days of the due date, the landlord can start to have you evicted. You will get no other notice as long as you live in this rental unit.'

The presence of this provision in the rental agreement fully satisfies the "written notice" requirement under this subsection and applies to a month-to-month tenancy following the specified lease term in the original rental agreement. If the rental agreement contains the provision set forth in this subsection, the landlord is not required to furnish any separate or additional written notice to the tenant in order to commence eviction proceedings for nonpayment of rent even after the original term of the rental agreement has expired.

Section 27-40-240(B) of the South Carolina Code of Laws in part provides:

"A person 'notifies' or "gives" a notice or notification to another person by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person 'receives' a notice or notification when:

(1) it comes to his attention; or

(2) in the case of the landlord, 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 the landlord as the place for receipt of the communication; or

(3) in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to the tenant at the place held out by him as the place for receipt of the communication, or in the absence of the designation, to the tenant's last known place of residence. Proof of mailing pursuant to this subsection constitutes notice without proof of receipt."

Term of Tenancy Or Occupancy Has Ended

Before an eviction action can be begun on the grounds that the term of tenancy or occupancy has ended, it must be established that such term of tenancy or occupancy has, in fact, ended. If the term of tenancy or occupancy is not initially agreed upon by the landlord and tenant, a written notice must be given in order to terminate the tenancy. Section 27-40-770 of the South Carolina Code of Laws provides:

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven days before the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the termination date specified in the notice.

(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. If the holdover is not in good faith, the landlord may recover reasonable attorney's fees. If the tenant's holdover is a willful violation of the provisions of this chapter or the rental agreement, the landlord may also recover an amount not more than three months periodic rent or twice the actual damages sustained by him, whichever is greater and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, Section 27-40-310(d) applies.

If there is an express agreement between the landlord and tenant as to the term of the tenancy, Section 27-35-110 of the South Carolina Code of Laws, which follows, applies:

"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."

If there is no express agreement between the landlord and tenant as to the term of the tenancy, Section 27-35-130 of the South Carolina Code of Laws, which follows, applies:

"All tenants at will and domestic servants shall vacate the premises occupied upon twenty days' written notice."

Terms or Conditions of the Rental Agreement Violated

If there is a violation of the terms or conditions of a rental agreement for residential promises, the Act provides additional steps before an eviction action can be filed. Section 27-40-710(A) provides:

(A) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement other than nonpayment of rent or a noncompliance with Section 27-40-510 materially affecting health and safety or the physical condition of the property, or Section 27-40-540, 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 fourteen days after receipt of the notice, if the breach is not remedied in fourteen days. The rental agreement terminates as provided in the notice except that:

(1) if the breach is remediable by repairs or otherwise and the tenant adequately remedies the breach before the date specified in the notice, or

(2) if the remedy cannot be completed within fourteen days, but is commenced within the fourteen-day period and is pursued in good faith to completion within a reasonable time, the rental agreement may not terminate by reason of the breach.

Procedure

You may file your ejectment action in the District Office of where the tenant resides. You must submit an affidavit and pay a filing fee of \$40.00 when you file the action. The Court will issue an Order to Show Cause which will be attached to your affidavit and served upon the tenant requiring him to either vacate the premises or show cause by requesting a hearing date. If the judge on the hearing date rules in favor of the landlord, the landlord may immediately or within five (5) working days after the hearing date request a writ of ejectment. This will cost an additional \$10.00. If this fee is not paid within this five day period, the landlord will have to start the eviction process all over again. The Lexington County Sheriff's Department will contact the landlord in reference to setting out any property left at the rental premises. The Sheriff's Department does not set out the tenant's property. It is the responsibility of the landlord to provide adequate labor to set out any property left by the tenant. The deputies are present only to assure a peaceful set-out.

Once a Writ of Ejectment is issued, the tenant must be given twenty-four hours to vacate the premises voluntarily. Section 27-37-160 of the South Carolina Code of Laws provides:

"In executing a writ of ejectment, the constable or deputy sheriff shall proceed to the premises, present to the occupants a copy of the writ and give the occupants twenty-four hours to vacate voluntarily. If the occupants refuse to vacate within twenty-four hours or the premises appear unoccupied, the constable or deputy sheriff shall announce his identity and purpose. If necessary, the deputy sheriff, but not a constable, may then enter the premises by force, using the least destructive means possible, in order to effectuate the ejectment. If the premises appear to be occupied and the occupant does not respond, the constable or deputy sheriff shall leave a copy of the writ taped or stapled at each corner and attached at the top of either the front or back door or in the most conspicuous place. Twenty-four hours following the posting of the writ, if the occupants have not vacated the premises voluntarily, the deputy sheriff, but not a constable, may then enter the premises by force, using the least destructive means possible, in order to effectuate the ejectment. Discretion may be exercised by the constable or deputy sheriff in granting a delay in the dispossession of ill or elderly tenants."

When setting out the property of a residential tenant, compliance with §27-40-710(D) of the South Carolina Code of Laws is mandated which states:

"Personal property belonging to a tenant removed from a premises as a result of an eviction proceeding under this chapter which is placed on a public street or highway shall be removed by the appropriate municipal or county officials after a period of forty-eight hours, excluding Saturdays, Sundays, and holidays, and may also be removed by these officials in the normal course of debris or trash collection before or after a period of forty-eight hours. If the premises is located in a municipality or county that does not collect trash or debris from the public highways, then after a period of forty-eight hours, the landlord may remove the personal property from the premises and dispose of it in the manner that trash or debris is normally disposed of in such municipalities or counties. The notice of eviction must clearly inform the tenant of the provisions of this section. The municipality or county and the appropriate officials or employees thereof have no liability in regard to the tenant if he is not informed in the notice of eviction of the provisions of this section."

COLLECTION OF RENT BY DISTRAINT

(This is in conjunction with eviction actions)

A landlord may enforce collection of rent due by distress in the following manner:

A judge may issue, upon receipt of an affidavit of the landlord or his agent setting forth the amount of rent due, a notice directed to the tenant stating the alleged amount of rent due, including any costs, and fixing a time and place for a pre-distress hearing to be held not earlier than five (5) days after the service of the notice. You may file your affidavit in the District Office in which the tenant resides. You must pay a filing fee when you file the affidavit. The notice, together with a copy of the affidavit, shall be delivered by a Lexington County Sheriff's Deputy. The deputy will serve a copy of the notice and affidavit on the tenant in whose possession the property sought to be distrained is located. If, after a reasonable search, the tenant cannot be located in the county, no person can be found in possession of the rented premises, and the premises have been abandoned for a period of fifteen (15) days or more immediately prior to the date of service, the copies of the affidavit and notice may be served by leaving them affixed to the most conspicuous part of the premises and by delivering them to the Clerk of Court.

PRE-DISTRESS HEARING

The purpose of the pre-distress hearing is to protect the tenant's use and possession of property from arbitrary encroachment and to prevent unfair or mistaken deprivation of property. If the judge finds that the landlord's right to distress is valid and the tenant has no overriding right to continue in possession of the property subject to distress, then the judge may issue his distress warrant naming the amount of rent due, with costs.

PROPERTY EXEMPT FROM DISTRESS

1. Personal clothing and food within the dwelling;
2. Bedsteads;
3. Bedding and cooking utensils; and
4. Property which is owned by a third party for which the judge finds ownership was not transferred from the tenant to the third party for the purpose of avoiding distraint.

SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT

<http://www.scstatehouse.gov/code/t27c040.htm>