CHAPTER 35

Creation, Construction, and Termination of Leasehold Estates

**SECTION 27‑35‑10.** Tenancies created by oral agreement.

 A tenancy for not to exceed one year may be created by oral agreement.

HISTORY: 1962 Code Section 41‑51; 1952 Code Section 41‑51; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Effect of statute of frauds on parol leases, see Section 27‑23‑60.

Inapplicability of this chapter to leases or rental agreements concerning real property insofar as it is inconsistent with the provisions of Chapter 40, Title 27, see Section 27‑40‑920.

Library References

Frauds, Statute Of 58(1).

Landlord and Tenant 23.

Westlaw Topic Nos. 185, 233.

C.J.S. Frauds, Statute Of Section 87.

C.J.S. Landlord and Tenant Sections 26, 330, 354.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 7, Written and Oral Leases Not Governed by the Rlta.

Forms

South Carolina Legal and Business Forms Section 14:1 , Legal Principles.

Treatises and Practice Aids

Restatement (2d) of Property, Don. Trans. Section 31.4, Gift of Donor’s Interest in Land.

LAW REVIEW AND JOURNAL COMMENTARIES

Habitability in Slum Leases. 20 S.C. L. Rev. 282.

Landlord and Tenant: Lease and Interdependent Instruments. 24 S.C. L. Rev. 620.

Legal Aspects of Farm Tenancy and Sharecropping in South Carolina. 9 SC LQ 299.

NOTES OF DECISIONS

In general 1

Holdover tenants 2

1. In general

Validity of parol lease. Hillhouse v Jennings (1901) 60 SC 373, 38 SE 599. Davis v Pollock (1891) 35 SC 584, 13 SE 897. Executor of Godard v South Carolina R.R. Co. (1845) 31 SCL 346. McDonald v Elfe (1819) 10 SCL 501. Clark v Bynum (1825) 14 SCL 298.

Where tenant entered into possession of premises under parol lease, and there was no express stipulation as to duration of tenancy, trustee in bankruptcy of his estate is entitled to hold premises for full year upon paying monthly rental. In re Schwartzman (D.C.S.C. 1909) 167 F. 399.

This section applies to and renders valid an oral agreement of tenancy not to exceed one year, even if it commences in the future, that is, commencing subsequent to the time of the agreement. Barksdale v. Hinson (S.C. 1948) 212 S.C. 1, 46 S.E.2d 170.

While it was stated that there is no inconsistency between this section and what is now Section 27‑33‑30, the question of whether a bona fide purchaser without notice is bound by a verbal lease made by the seller where the tenant has not entered into possession, was not decided, as was stated in the concurring opinion. Barksdale v. Hinson (S.C. 1948) 212 S.C. 1, 46 S.E.2d 170.

Tenancy means here “an agreement of tenancy,” not “an occupancy.” Wright v. Ritz Theatre Co. (S.C. 1947) 211 S.C. 161, 44 S.E.2d 308.

From the statutes and the decisions interpreting them the following principles may be deduced: (1) A parol lease gives a tenant a right of possession for a term of twelve months from the time of entering on the premises. If the lease is for a term less than twelve months, of course the tenant would only be entitled to hold possession for the time stipulated after entering into possession of the premises. (2) A parol lease undertaking to give a tenant a right of possession for a longer term than twelve months is within the statute of frauds. Nevertheless, if the tenant is permitted to enter on the premises by virtue of such agreement, he shall have a right of possession for twelve months from the time of such entry, but no longer. (3) A parol lease under which the tenant enters upon the premises shall, after the term of twelve months from the time of entering on the premises, have the effect of an estate at will only. (4) If a landlord refuses to permit a tenant to enter on the premises under a parol lease, no action shall be brought to charge him upon such contract, even if the lease is not for a term exceeding twelve months. Hillhouse v. Jennings (S.C. 1901) 60 S.C. 373, 38 S.E. 599.

2. Holdover tenants

Tenant being tenant at will and not tenant from year to year after expiration of twelve months from time of entering on premises under parol lease, assignee of lessee under written lease executed after expiration of twelve‑month period could maintain ejectment against tenant under parol lease. Pure Oil Co. of the Carolinas v. Strom (S.C. 1934) 172 S.C. 77, 172 S.E. 780. Landlord And Tenant 706; Landlord And Tenant 771

If a tenant under a parol lease for a year simply continues in possession after termination of lease, he may be a tenant at will, or a tenant from year to year according to circumstances. Matthews v. Hipp (S.C. 1903) 66 S.C. 162, 44 S.E. 577. Landlord And Tenant 706

Continuation in possession under a parol lease for a year does not give right to possession against a landlord or any person claiming under him after the first year. State v. Mays (S.C. 1886) 24 S.C. 190.

**SECTION 27‑35‑20.** Agreement for more than one year.

 Any agreement for the use or occupation of real estate for more than one year shall be void unless in writing.

HISTORY: 1962 Code Section 41‑52; 1952 Code Section 41‑52; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

For requirement that instrument transferring property used for hazardous waste storage or disposal contain notice of such use, see Section 30‑5‑36.

Library References

Frauds, Statute Of 58(1).

Landlord and Tenant 23.

Westlaw Topic Nos. 185, 233.

C.J.S. Frauds, Statute Of Section 87.

C.J.S. Landlord and Tenant Sections 26, 330, 354.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 7, Written and Oral Leases Not Governed by the Rlta.

Forms

South Carolina Legal and Business Forms Section 14:1 , Legal Principles.

Treatises and Practice Aids

Restatement (2d) of Property, Don. Trans. Section 31.4, Gift of Donor’s Interest in Land.

LAW REVIEW AND JOURNAL COMMENTARIES

Robertson, Electronic commerce on the internet and the statute of frauds, 49 S.C. L. Rev. 787, Summer 1998.

NOTES OF DECISIONS

In general 1

Equitable estoppel 3

Part performance 2

1. In general

A tenant could not assert the statute of frauds as a defense where the tenant was a tenant at will because there was no evidence of any oral agreement for the use or occupation of the real estate for more than one year. Carson v. Living Word Outreach Ministries, Inc. (S.C.App. 1993) 315 S.C. 64, 431 S.E.2d 615.

Stated in Barksdale v. Hinson (S.C. 1948) 212 S.C. 1, 46 S.E.2d 170.

The time limit refers to the occupancy, not the period from the parol agreement to the end of the term. So that a verbal lease to begin in the future but not to last more than a year from the time the occupancy begins, is not invalid. Wright v. Ritz Theatre Co. (S.C. 1947) 211 S.C. 161, 44 S.E.2d 308.

2. Part performance

Section 27‑35‑20 does not prohibit court from ordering property owner to execute 5‑year lease on same terms as oral lease, where court found that parties had oral lease for 5 years and that lease agreement was taken out of operation of statute of fraud by reason of part performance. Gibson v. Hrysikos (S.C.App. 1987) 293 S.C. 8, 358 S.E.2d 173.

Demonstration of sufficient part performance to remove agreement from operation of statute of frauds rendered without merit argument that Section 27‑35‑20 was separate from Section 32‑3‑10, and that part performance could not relieve lessee from operation of Section 27‑35‑10. Gibson v. Hrysikos (S.C.App. 1987) 293 S.C. 8, 358 S.E.2d 173.

Demurrer to the complaint on the ground that the alleged contract upon which the action was based was an oral contract for the subleasing, use, or occupancy of real estate, in violation of this section and what are now Sections 32‑3‑10 and 27‑23‑50, was properly overruled, where the questions whether the alleged contract violated the statute of frauds or was removed from the operation of the statute as a contract of guaranty or by virtue of part performance could properly be determined only after the facts were developed on a trial of the merits. Leventis v. Acciardo (S.C. 1971) 256 S.C. 437, 182 S.E.2d 726. Frauds, Statute Of 150(1)

3. Equitable estoppel

In order to overcome statutory requirements that an agreement be in writing, a party asserting equitable estoppel must show that he or she suffered a definite, substantial, detrimental change of position in reliance on such agreement and that no remedy except enforcement of the bargain is adequate to restore his or her former position. Player v. Chandler (S.C. 1989) 299 S.C. 101, 382 S.E.2d 891. Frauds, Statute Of 144

**SECTION 27‑35‑30.** Tenancies deemed month to month; exceptions.

 All tenancies of real estate other than agricultural lands shall be deemed from month to month unless there be an agreement otherwise. But this section shall not apply to domestic servants, farm laborers or tenants at will.

HISTORY: 1962 Code Section 41‑53; 1952 Code Section 41‑53; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 73, 115(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 209 to 210, 228 to 229.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 13, Periodic Tenancies.

**SECTION 27‑35‑40.** Use of premises without agreement or permission or by trespass; rent.

 When a person enters upon or uses the premises of another without agreement or without the permission of the owner or by trespass the owner may at his option waive such tort and treat and deem such person a tenant at will. In such case the landlord shall have and be entitled to a reasonable rental for the use and occupation of such premises and all remedies for the enforcement of his rights in respect thereto as in other cases of tenancy at will.

HISTORY: 1962 Code Section 41‑54; 1952 Code Section 41‑54; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 14, 118(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 13, 245 to 246, 248 to 249, 251 to 263, 266.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 7, Written and Oral Leases Not Governed by the Rlta.

S.C. Jur. Landlord and Tenant Section 14, Tenancies at Will.

LAW REVIEW AND JOURNAL COMMENTARIES

Spitz, Is It Time to Reform Landlord Remedies in South Carolina? 34 S.C. L. Rev. 787 (1983).

Attorney General’s Opinions

Unless there is an oral or written contract permitting entry of a tenant’s premises by a landlord or the existence of a situation involving certain qualified instances permitting entry, no right of entry by a landlord exists. 1978 Op. Atty Gen, No. 78‑49, p 76.

NOTES OF DECISIONS

In general 1

1. In general

Where one co‑tenant has ousted the other co‑tenant and kept them out by force, he is liable as a trespasser for the rental value of the property beyond his ownership share. Parker v. Shecut (S.C. 2002) 349 S.C. 226, 562 S.E.2d 620. Tenancy In Common 28(3)

This section and what is now Section 27‑33‑10(3) abrogate the common‑law rule that where a tenant holds over after the expiration of the term provided for in his lease, with the consent of the landlord, a new tenancy arises to which the provisions of the expired lease are applicable. Townsend v. Singleton (S.C. 1971) 257 S.C. 1, 183 S.E.2d 893.

After termination of a lease, one continuing to occupy the premises, absent a new agreement, express or implied, comes squarely within the definition of a tenant at will. Townsend v. Singleton (S.C. 1971) 257 S.C. 1, 183 S.E.2d 893.

This section, what is now Section 27‑33‑10(3), and what is now Section 27‑35‑130 make no exception, in case of a tenant holding over, to the provision in what is now Section 27‑35‑110 that a tenancy terminates on the last day of the term. Townsend v. Singleton (S.C. 1971) 257 S.C. 1, 183 S.E.2d 893.

**SECTION 27‑35‑50.** Sale of real estate under lease.

 When real estate is sold while under lease, the relationship of landlord and tenant is created ipso facto as between the purchaser and the tenant as if the purchaser had been the landlord in the first instance and the purchaser shall be entitled to all the benefits and rights under such lease as if he had been the lessor from the date of the purchase.

HISTORY: 1962 Code Section 41‑55; 1952 Code Section 41‑55; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 252(4).

Vendor and Purchaser 196.

Westlaw Topic Nos. 233, 400.

C.J.S. Landlord and Tenant Section 1234.

C.J.S. Vendor and Purchaser Section 452.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 18, Transfer of Landlord’s Estate.

S.C. Jur. Landlord and Tenant Section 40, Right to Assign or Sublet.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Wright v. Player (S.C. 1958) 233 S.C. 223, 104 S.E.2d 289.

**SECTION 27‑35‑60.** Validity and effect of subleases.

 A sublease by a tenant without written consent of the landlord is a nullity insofar as the rights of the landlord are concerned, except that rent collected by a tenant from a subtenant shall be deemed to be held in trust by the tenant for the benefit of the landlord until the payment of the landlord’s claim for rent. But when the premises have been sublet the sublessor, as between himself and the subtenant or sublessee, shall be deemed the landlord and the sublessee the tenant under him and the provisions of Chapters 33 through 37, Section 27‑39‑10 and Article 3 of Chapter 39 of this Title, other than Sections 27‑35‑80, 27‑35‑170 and 27‑35‑180, 27‑39‑280 and 27‑39‑300 shall apply to sublessors and sublessees, as between themselves, as in other cases of landlord and tenant.

HISTORY: 1962 Code Section 41‑56; 1952 Code Section 41‑56; 1946 (44) 2584; 1972 (57) 2451.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 75(3), 76(3), 80.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 34, 37 to 40, 59 to 64, 757.

RESEARCH REFERENCES

Encyclopedias

102 Am. Jur. Trials 277, Landlord’s Unreasonable Refusal of Consent to Assignment or Sublease.

S.C. Jur. Landlord and Tenant Section 40, Right to Assign or Sublet.

S.C. Jur. Landlord and Tenant Section 41, Effect of Assignment or Subletting.

Forms

South Carolina Legal and Business Forms Section 14:1 , Legal Principles.

LAW REVIEW AND JOURNAL COMMENTARIES

Express language required to restrict use of property demised in lease. 39 S.C. L. Rev. 142, Autumn, 1987.

NOTES OF DECISIONS

In general 1

1. In general

Lease agreement providing that tenant could “use and occupy the premises as desired, including the construction of a dwelling, etc., thereon” did not convey to tenant the right to sublease the property without landlord’s written consent; leasehold estates statute declared the sublease by a tenant without the written consent of the landlord a nullity insofar as the rights of the landlord were concerned. Nexsen v. Haddock (S.C.App. 2002) 353 S.C. 74, 576 S.E.2d 183, rehearing denied. Landlord And Tenant 733

**SECTION 27‑35‑70.** Person deemed in possession of real estate.

 In all cases of tenancy the owner, landlord or person entitled to possession shall be deemed to be in possession of the real estate used or occupied by the tenant and the tenant shall be deemed to be holding thereunder.

HISTORY: 1962 Code Section 41‑57; 1952 Code Section 41‑57; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 50, 56(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 506, 515 to 519.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 14:1 , Legal Principles.

**SECTION 27‑35‑75.** Lessee’s obligations as to use and maintenance; lessor’s right to inspect.

 (A) Unless otherwise agreed to in a commercial lease agreement or a security agreement, this section applies to all leases on commercial units located in South Carolina.

 (B) A lessee must:

 (1) comply with all obligations imposed upon lessees by applicable building and housing code provisions that materially affect health and safety;

 (2) not deliberately or negligently destroy, deface, damage, impair, abuse, or remove any part of the premises or knowingly permit any person to do so who is on the premises with the lessee’s permission or who is allowed access to the premises by the lessee;

 (3) conduct himself and require other persons on the premises with the lessee’s permission or who are allowed access to the premises by the lessee to conduct themselves in a manner that will not disturb other lessees’ peaceful enjoyment of the premises; and

 (4) comply with the commercial lease agreement or security agreement.

 (C) In cases of real estate, fixtures, and equipment, or any of them that are the subject of a commercial lease agreement, the lessor has the right to enter and inspect the leased premises as provided in subsection (D) to determine if the leased real estate, fixtures, and equipment, or any of them:

 (1) are being used in a reasonable and safe manner as provided in subsection (B) or in the commercial lease agreement or security agreement; and

 (2) are being negligently, deliberately, or knowingly destroyed, defaced, damaged, impaired, abused, or removed in violation of subsection (B) or the terms of the commercial lease agreement or security agreement.

 (D) The lessor must not abuse the right to enter and inspect the premises pursuant to this section and must not use this right of access to harass the lessee. Except in the case of a demonstrable emergency, the lessor must give the lessee at least twenty‑four hours’ written notice of his intent to enter and inspect the premises, and the entry must be scheduled at a reasonable time.

 (E) A lessee must not unreasonably withhold consent to the lessor to enter and inspect the subject premises for the purposes described in subsection (C).

 (F) If the lessee unreasonably withholds consent to the lessor to allow lawful access to the subject premises as described in subsection (C), the lessor may obtain injunctive relief in the magistrates court or the circuit court in the county in which the property is located, without posting bond, to compel access. If injunctive relief is sought, the prevailing party may recover actual damages and reasonable attorney’s fees and costs.

HISTORY: 2005 Act No. 15, Section 1.

Editor’s Note

2005 Act No. 15, Section 2, provides in part as follows:

This act . . . . applies to all leases on commercial units located in South Carolina, whether created before or after this act’s effective date [January 1, 2005]. The obligations imposed and rights created by this act accrue on or after the effective date of the act.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 49, Requirements Outside the Rlta.

**SECTION 27‑35‑80.** Attornments by tenants.

 To prevent the difficulty and expense to which a landlord or lessor may be put by the fraudulent practice of tenants in attorning to strangers who claim title to the estates of their respective landlords or lessors, every such attornment of any tenant of any lands, tenements or hereditaments shall be absolutely null and void to all intents and purposes whatsoever and the possession of the landlord or lessor shall not be deemed or construed to be in any wise changed, altered or affected by any such attornment. But nothing herein contained shall extend to vacate or affect any attornment made pursuant to, and in consequence of, some judgment, decree or order of court or made with the privity and consent of the landlord or lessor or pursuant to Section 27‑35‑50.

HISTORY: 1962 Code Section 41‑58; 1952 Code Section 41‑58; 1942 Code Section 8803; 1932 Code Section 8803; Civ. C. ‘22 Section 5269; Civ. C. ‘12 Section 3499; Civ. C. ‘02 Section 2413; G. S. 1810; R. S. 1929; 1712 (2) 575.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 15, 68.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 13, 19 to 20, 589, 642 to 650.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 17, Attornment by Tenant.

NOTES OF DECISIONS

In general 1

1. In general

Attornment to stranger, see Hill v. Williams (S.C. 1894) 41 S.C. 134, 19 S.E. 290.

Estoppel to deny landlord’s title, see Harvey v. Harvey (S.C. 1887) 26 S.C. 608, 2 S.E. 3.

Tenant under trespasser could with his consent attorn to the true owner. Moore v. Johnston (S.C. 1844).

**SECTION 27‑35‑90.** Time for payment of rents.

 Unless otherwise agreed upon rents shall be payable monthly and at the end of each calendar month, excepting rents for farm lands.

HISTORY: 1962 Code Section 41‑59; 1952 Code Section 41‑59; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 213(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1041, 1043, 1047.

**SECTION 27‑35‑100.** Time of termination of farm tenancies.

 All tenancies of farm laborers, sharecroppers and renters of farm lands shall end on the last day of December in each year unless there be an express agreement to the contrary or unless continued by operation of law as herein provided.

HISTORY: 1962 Code Section 41‑60; 1952 Code Section 41‑60; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 322.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1499, 1508.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 13, Periodic Tenancies.

**SECTION 27‑35‑110.** Time of expiration of agreed tenancy for term or years.

 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.

HISTORY: 1962 Code Section 41‑62; 1952 Code Section 41‑62; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 72, 94(2).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 28, 140 to 142, 145, 148, 181 to 182.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 12, Tenancies for Years and Tenancies for Terms.

S.C. Jur. Landlord and Tenant Section 44, Construction of Option to Extend or Renew.

NOTES OF DECISIONS

In general 1

1. In general

Statute, providing that when there is an express agreement as to the term of the tenancy of a tenant for a term or for years such tenancy shall end without notice upon the last day of the agreed term, did not require automatic end of lessee’s tenancy, under lease providing for an initial five‑year term and an option for renewing for additional terms, but which lease allowed lessee to renew simply by continued occupancy of property; lessee’s tenancy would have ended on “the last day of the agreed term” only if it had not renewed the lease for an additional term. McNair v. United Energy Distributors (S.C.App. 2010) 390 S.C. 44, 699 S.E.2d 723. Landlord And Tenant 836(6)

Phrase “in the event of termination” contemplates some event which at time lease is entered into is not certain to occur. Piedmont Interstate Fair Ass’n v. City of Spartanburg (S.C. 1980) 274 S.C. 462, 264 S.E.2d 926.

What are now Sections 27‑35‑40, 27‑33‑10(3), and 27‑35‑130 make no exception, in case of a tenant holding over, to the provision in this section that a tenancy terminates on the last day of the term. Townsend v. Singleton (S.C. 1971) 257 S.C. 1, 183 S.E.2d 893.

After termination of a lease, one continuing to occupy the premises, absent a new agreement, express or implied, comes squarely within the definition of a tenant at will. Townsend v. Singleton (S.C. 1971) 257 S.C. 1, 183 S.E.2d 893.

Applied in National Bank of South Carolina v. People’s Grocery Co. (S.C. 1929) 153 S.C. 118, 150 S.E. 478.

A tenant at will held over under a lease which had terminated on the date of its expiration by the express provisions of this section, after notice that an increased rental would be charged thereafter. Under what is now Section 27‑35‑10, the new holding would have been for a year at most; it was not a tenancy from year to year. The sued the mortgage creditor to determine right of possession. It was held, that it was error to charge that, if the rent contract antedated the mortgage, to find for plaintiff, but, if the mortgage antedated the contract, to find for defendant, leaving it to the jury to say whether the change in rental made a new contract. Simmons v. Martin (S.C. 1923) 123 S.C. 349, 116 S.E. 441. Trial 199

**SECTION 27‑35‑120.** Termination of month to month tenancy.

 A tenancy from month to month may be ended by either party giving to the other written notice of thirty days to the effect that such tenancy shall be then terminated. No such tenancy shall ripen into a tenancy from year to year.

HISTORY: 1962 Code Section 41‑63; 1952 Code Section 41‑63; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 116(5).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 209 to 210, 220, 227 to 228, 233 to 238.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 13, Periodic Tenancies.

**SECTION 27‑35‑130.** Notice required for tenants at will and domestic servants.

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

HISTORY: 1962 Code Section 41‑64; 1952 Code Section 41‑64; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 120(2).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 267 to 273, 275 to 280, 293 to 294.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 14, Tenancies at Will.

Forms

South Carolina Legal and Business Forms Section 14:1 , Legal Principles.

NOTES OF DECISIONS

In general 1

1. In general

After termination of a lease, one continuing to occupy the premises, absent a new agreement, express or implied, comes squarely within the definition of a tenant at will. Townsend v. Singleton (S.C. 1971) 257 S.C. 1, 183 S.E.2d 893.

What are now Sections 27‑35‑40, 27‑33‑10(3), and this section make no exception, in case of a tenant holding over, to the provision in what is now Section 27‑35‑110 that a tenancy terminates on the last day of the term. Townsend v. Singleton (S.C. 1971) 257 S.C. 1, 183 S.E.2d 893.

Additional related case, see Monarch Mills, Lockhart Plant v. Godshall (S.C. 1934) 173 S.C. 286, 175 S.E. 552.

Where subtenant enters under promise of landlord to execute a new lease, which he afterwards refuses to do, he does not become a tenant at will. Morris v. Palmer (S.C. 1895) 44 S.C. 462, 22 S.E. 726.

**SECTION 27‑35‑140.** Failure to pay rent.

 Failure to pay the rent agreed upon when due, or a reasonable rent for use and occupation when demanded, shall terminate all tenancies for a term, for years, from month to month and at will and the tenant shall forthwith vacate the premises without notice.

HISTORY: 1962 Code Section 41‑65; 1952 Code Section 41‑65; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 108(1), 116(0.5), 120(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 173, 183, 209 to 210, 220, 227 to 228, 267 to 273, 293.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 3

Liability for rent 2

Review 4

1. In general

Commercial tenant was not entitled to the lease payments landlord received after renting a wooded portion of the demised premises to a third party for the construction of a communications tower, and landlord was not unjustly enriched by retaining them; while tenant may have had the opportunity to sublease the wooded area, any sublease was subject to landlord’s approval and did not exist as a matter of right. 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc. (S.C.App. 2014) 411 S.C. 466, 769 S.E.2d 242, certiorari denied. Implied and Constructive Contracts 3; Landlord and Tenant 733

While commercial tenant was entitled to an award of nominal damages for landlord’s breach, it was not entitled to abate rent under the lease, absent any showing that tenant’s use of the property was substantially interfered with. 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc. (S.C.App. 2014) 411 S.C. 466, 769 S.E.2d 242, certiorari denied. Landlord and Tenant 1080(6); Landlord and Tenant 1437

Landlord’s breach of commercial lease by allowing the construction of a communications tower in a wooded area that comprised part of the demised premises based on its unilateral mistake did not constitute a substantial interference with the demised premises, and thus tenant breached the lease by failing to pay the agreed upon rent, and landlord was entitled to payment of those funds; tenant’s representative testified that the tower had not interfered with any of the parking on the leased premises, and that there was no need to use the wooded area in question. 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc. (S.C.App. 2014) 411 S.C. 466, 769 S.E.2d 242, certiorari denied. Landlord and Tenant 1437

Evidence was insufficient to support master‑in‑equity’s finding of mutual mistake at the time lease was entered into regarding whether a wooded area was included in the demised premises, as a basis for reformation of the lease; the tenant’s representative who negotiated the lease indicated the lease included the wooded area landlord subsequently leased to a third party for the erection of a communications tower for a total of 1.21 acres even though it was not feasible to develop the area for parking at that time, and the real estate agent used to secure the lease testified the lease was for the entire 1.21 acres. 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc. (S.C.App. 2014) 411 S.C. 466, 769 S.E.2d 242, certiorari denied. Landlord and Tenant 1042

While parol evidence was not necessary to ascertain the extent of the demised premises in commercial lease when the lease was not ambiguous, it was relevant to the question of damages on tenant’s breach of lease claim, and therefore admissible, because the plans demonstrated the speculative nature of any future use of the wooded area in dispute. 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc. (S.C.App. 2014) 411 S.C. 466, 769 S.E.2d 242, certiorari denied. Evidence 450(4)

Landlord breached commercial lease by allowing a third party to erect a communications tower on a portion of the demised premises; the lease unambiguously indicated the entire 1.21 acres constituted the demised premises, and the tower’s presence within the demised premises deprived commercial tenant of full, quiet, peaceful possession, and interfered with its use of the property in some manner. 56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc. (S.C.App. 2014) 411 S.C. 466, 769 S.E.2d 242, certiorari denied. Landlord and Tenant 1076; Landlord and Tenant 1080(1)

The relationship of landlord and tenant is terminated where the lessor, for his own purposes, reenters and relets the demised premises upon the lessee’s abandonment of the property and default in the payment of the rent. Surety Realty Corp. v. Asmer (S.C. 1967) 249 S.C. 114, 153 S.E.2d 125. Landlord And Tenant 933

The measure of damages resulting from lessee’s breach of contract is the amount lessor would have received as rent for the remainder of the term had there been no default, less any amount received from the new tenant. U.S. Rubber Co. v. White Tire Co. (S.C. 1956) 231 S.C. 84, 97 S.E.2d 403.

A lease is terminated by lessor’s re‑entry and re‑letting following lessee’s abandonment of property and default in payment of rent, and relation of landlord and tenant ends. U.S. Rubber Co. v. White Tire Co. (S.C. 1956) 231 S.C. 84, 97 S.E.2d 403. Landlord And Tenant 1462(3)

2. Liability for rent

When a tenant delivers the keys of the leased premises to the landlord and he receives them so as to be able to rent the premises for the account of the lessee, such is insufficient to terminate the lease or release the tenant from further liability for rent. Surety Realty Corp. v. Asmer (S.C. 1967) 249 S.C. 114, 153 S.E.2d 125. Landlord And Tenant 934; Landlord And Tenant 1459

Landlord’s notice of intention to claim premises in the future in violation of lease does not relieve the tenant of the obligation to pay current rent, and an action for ejectment will lie for failure to do so. Wright v. Player (S.C. 1958) 233 S.C. 223, 104 S.E.2d 289.

Upon termination of landlord‑tenant relation, lessee has no further obligation for future rent; its liability to lessor is for damages resulting from its breach of the contract. U.S. Rubber Co. v. White Tire Co. (S.C. 1956) 231 S.C. 84, 97 S.E.2d 403. Landlord And Tenant 1462(3)

3. Admissibility of evidence

Trial court’s erroneous consideration of extrinsic evidence in construing unambiguous commercial lease agreement was harmless, where trial court discussed the extrinsic evidence only in setting forth alternative grounds for coming to its otherwise proper conclusion regarding scope of damages for breach contemplated by lease agreement. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Appeal and Error 1050.1(5)

After concluding that term “damages” in default provision of commercial lease was clear and unambiguous, trial court improperly considered extrinsic evidence of the parties’ correspondence as further support for its interpretation of lease as requiring tenant to pay future rents as damages upon default. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Evidence 448

4. Review

Commercial tenant abandoned, and thus failed to preserve for appellate review, her argument that trial court erred in sustaining landlord’s objection to questioning on cross‑examination concerning landlord’s intent behind language in commercial lease, where tenant, in her appellate brief, merely recited the trial transcript and made a conclusory argument, without citing legal authority to support her claim. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Appeal and Error 1079

Commercial tenant abandoned, and thus failed to preserve for appellate review, her argument that trial court erred in sustaining landlord’s objection to questioning on cross‑examination concerning language in two subsequent leases which landlord entered into with two different tenants, where commercial tenant, in her appellate brief, made only a conclusory argument, without citing legal authority to support her claim. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Appeal and Error 1079

**SECTION 27‑35‑150.** Abandonment of premises.

 When a tenant abandons premises theretofore occupied by him the landlord may enter and take possession thereof, making distraint as herein provided of any property found thereon, including the property exempt from distress by the provisions of Section 27‑39‑230 and the term of a tenant abandoning premises used and occupied by him as such shall be deemed ended by such abandonment. Absence from the property for fifteen days after default in the payment of rent shall be construed as abandonment.

HISTORY: 1962 Code Section 41‑66; 1952 Code Section 41‑66; 1946 (44) 2584.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 110(1), 116(0.5), 120(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 196 to 197, 209 to 210, 220, 227 to 228, 267 to 273, 293.

Notes of Decisions

In general 1

1. In general

The term “damages,” in commercial lease provision governing tenant’s liability for damages upon default in making rent payments, included rents due during remainder of lease term following termination of the lease; lease stated that landlord could reenter and repossess leased premises without prejudicing its right to damages, default provision stated that tenant must pay all costs, damages, and expenses suffered by landlord by reason of tenant’s default, and default provision stated that, upon termination, tenant was not relieved of future obligations for damages resulting from breach. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Landlord and Tenant 1462(2)

After commercial tenant abandoned premises and landlord terminated lease by reentering and reletting premises, landlord was entitled to damages for breach of lease measured by amount it would have received over remainder of lease term had there been no breach, less rent amounts received from subsequent tenants; lease agreement included provision expressly reserving landlord’s right to recover damages resulting from tenant’s breach after landlord’s reentry of premises, tenant had occupied the premises for several years and had renewed lease prior to default, and tenant had voluntarily abandoned the premises, which did not affect her right to enter premises and exercise her rights under lease. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Landlord and Tenant 1462(3)

Pursuant to rule of Simon v. Kirkpatrick, a lessor’s termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding this termination for cause by the lessor, the lessee shall not be relieved of such future obligations. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Landlord and Tenant 1462(2)

Commercial tenant abandoned leased premises, and thus ten‑day notice provided by landlord requiring tenant to pay past‑due rent or vacate the premises could not have effected termination by eviction, where tenant admitted that she had vacated the premises prior to receipt of ten‑day notice, and tenant subsequently surrendered possession of the premises by turning over the keys to landlord. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Landlord and Tenant 934; Landlord and Tenant 937

**SECTION 27‑35‑160.** Unlawful abandonment of buildings without notice.

 Any tenant abandoning a building and leaving it open and exposed to vandalism without giving notice to the landlord of such action shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 41‑67; 1962 (52) 1909.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 49(1), 110(1), 140.1.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 196 to 197, 412, 490 to 491, 493, 499.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 20, Injuries to Landlord’s Reversion.

S.C. Jur. Landlord and Tenant Section 49, Requirements Outside the Rlta.

**SECTION 27‑35‑170.** Holding over following demand for possession; penalty.

 All tenants, whether for life or years, by sufferance or at will, or persons coming in under or by collusion with them who shall hold over after the legal determination of their estates, after demand made in writing for delivering possession thereof by the person having the reversion or remainder therein or his agent, for the space of three months after such demand shall forfeit double the value of the use of the premises, recoverable by action.

HISTORY: 1962 Code Section 41‑72; 1952 Code Section 41‑72; 1942 Code Section 8800; 1932 Code Section 8800; Civ. C. ‘22 Section 5267; Civ. C. ‘12 Section 3497; Civ. C. ‘02 Section 2411; G. S. 1808; R. S. 1927; 1808 (5) 565.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 286, 291(14).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1359, 1363.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 28, Leases Not Governed by the Rlta.

Forms

South Carolina Legal and Business Forms Section 14:1 , Legal Principles.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

This section is not unconstitutional. Talvande v. Cripps (S.C. 1825).

2. In general

Award of double rent pursuant to South Carolina Code Section 27‑35‑170 is error where landlord fails to plead statute. Lund v. Gray Line Water Tours, Inc. (S.C. 1982) 277 S.C. 447, 289 S.E.2d 404.

Termination of tenancy from year to year, see Newton v. Odom (S.C. 1903) 67 S.C. 1, 45 S.E. 105.

Liability for forfeiture begins from demand and not from expiration of three months. Reeves v. McKenzie (S.C. 1830).

Where landlord recovers the forfeiture provided by this section, he cannot sue for damages for holding over. Crips v. Talvande (S.C. 1826).

**SECTION 27‑35‑180.** Penalty for not delivering possession after notice of intent to quit.

 In case any tenant shall give notice in writing of his intention to quit the premises rented by him and shall not accordingly deliver up the possession at the time in such notice contained, the tenant, his executors or administrators, shall pay to the landlord double the rent which he otherwise would have been liable to pay. But nothing herein contained shall be construed to give such tenant a right to discontinue or determine his tenancy by such notice in any other manner than according to the laws of force at the time of giving such notice.

HISTORY: 1962 Code Section 41‑73; 1952 Code Section 41‑73; 1942 Code Section 8814; 1932 Code Section 8814; Civ. C. ‘22 Section 5280; Civ. C. ‘12 Section 3510; Civ. C. ‘02 Section 2424; G. S. 1820; R. S. 1940; 1712 (2) 578; 1808 (5) 565.

CROSS REFERENCES

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 286, 291(14).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1359, 1363.

NOTES OF DECISIONS

In general 1

1. In general

To terminate a lease from year to year, notice of such intention must be given a reasonable time before the end of the calendar year. Jones v. Spartanburg Herald Co. (S.C. 1895) 44 S.C. 526, 22 S.E. 731. Landlord And Tenant 970

Whether the notice of intention to terminate a lease from year to year has been given a reasonable time before the end of the calendar year must be determined by the jury. Jones v. Spartanburg Herald Co. (S.C. 1895) 44 S.C. 526, 22 S.E. 731. Landlord And Tenant 991