CHAPTER 37

Ejectment of Tenants

CROSS REFERENCES

Time for motion for new trial, appeal, exception, see Section 22‑3‑1000.

**SECTION 27‑37‑10.** Grounds for ejectment of tenant.

(A) The tenant may be ejected upon application of the landlord or his agent when (1) the tenant fails or refuses to pay the rent when due or when demanded, (2) the term of tenancy or occupancy has ended, or (3) the terms or conditions of the lease have been violated.

(B) For residential rental agreements, nonpayment of rent within five days of the date due constitutes legal notice to the tenant that the landlord has the right to begin ejectment proceedings under this chapter if a written rental agreement specifies in bold conspicuous type that nonpayment of rent constitutes such notice. This requirement is satisfied if the written rental agreement contains the notice specified in Section 27‑40‑710(B).

HISTORY: 1962 Code Section 41‑101; 1952 Code Section 41‑101; 1946 (44) 2584; 2000 Act No. 409, Section 5.

CROSS REFERENCES

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

Ejecting a citizen from rented property because of political opinions or the exercise of civil rights, see Section 16‑17‑560.

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.

Provision that a landlord must proceed pursuant to this chapter when a dwelling unit has been abandoned or the rental agreement has expired and the tenant has left personal property worth over $500 on the premises, see Section 27‑40‑730.

Recovery of real property generally, see Sections 15‑67‑10 et seq.

Library References

Landlord and Tenant 281, 290(2).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1338, 1368 to 1370.

RESEARCH REFERENCES

Encyclopedias

108 Am. Jur. Proof of Facts 3d 449, Landlord’s Right to Evict Tenants or Other Occupants from Residential Property.

S.C. Jur. Forcible Entry and Detainer Section 6, Forms and Proceedings.

S.C. Jur. Improvements Section 3, When an Action for Betterments May Arise.

S.C. Jur. Landlord and Tenant Section 26, Leases Not Governed by the Rlta.

S.C. Jur. Landlord and Tenant Section 56, Nature of the Remedy and Prerequisites.

Forms

Am. Jur. Pl. & Pr. Forms Landlord and Tenant Section 141 , Introductory Comments.

Treatises and Practice Aids

44 Causes of Action 2d 447, Cause of Action by Residential Landlord to Evict Tenants or Other Occupants.

LAW REVIEW AND JOURNAL COMMENTARIES

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

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.

Attorney General’s Opinions

Without other specific authority permitting such, a sheriff or magistrate’s constable is without authority to make forcible entry to accomplish an ejectment; this conclusion is also buttressed by the fact that under the earlier ejectment statutes before the 1946 Act which serves as basis for Sections 27‑37‑10, et seq., Code of Laws of South Carolina, 1976 the use of such force as necessary to accomplish ejectment was authorized; however such a provision was not included in the present statute; furthermore, entry where a tenant is absent from the premises. 1978 Op. Atty Gen, No. 78‑117, p 151.

A city recorder does not have jurisdiction to hear ejection and other proceedings under Section 22‑3‑10(10) Code of Laws of S.C. (1976). Magistrates have the jurisdiction to hear matters of landlord and tenants. 1978 Op. Atty Gen, No. 78‑32, p 49.

NOTES OF DECISIONS

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Public housing 4

1. In general

Section 27‑37‑10, which provides that a tenant may be ejected if the tenant fails or refuses to pay rent when due or when demanded, or if the terms and conditions of the lease have been violated, was enacted to give the lessor the right to terminate the lease in absence of a contractual provision, which was not recognized at common law. Kiriakides v. United Artists Communications, Inc. (S.C. 1994) 312 S.C. 271, 440 S.E.2d 364. Landlord And Tenant 910; Landlord And Tenant 921

The fact that a lease did not stress prompt payment of rent and eviction upon default would not save the tenant from the application of Section 27‑37‑10, which clearly allows ejectment for failure to pay rent when due; the statute itself gives the landlord this right and it is not necessary that it be repeated in the lease. Billips v. Hawkins (S.C.App. 1989) 298 S.C. 435, 381 S.E.2d 210.

Applied in Baldwin v Baldwin (1954) 224 SC 429, 79 SE2d 459. Laughlin v. Livingston (S.C. 1958) 233 S.C. 81, 103 S.E.2d 741.

Lessee may not be ejected for failure to credit rents to an improvement account created by agreement in lease that lessee would advance funds to construct gasoline station and would receive reimbursement in full out of first rents accruing, because until sufficient rents have accrued to retire improvement account in full, there are no rents due lessor and no grounds for ejectment. Wallace v. Wannamaker (S.C. 1957) 231 S.C. 158, 97 S.E.2d 502.

The prime rule requires strict construction of a statutory provision which would work a forfeiture or inflict a penalty. Wallace v. Wannamaker (S.C. 1957) 231 S.C. 158, 97 S.E.2d 502. Forfeitures 24(2); Statutes 1318

Lessee of wharves and slips, under contract obligating lessor to furnish six feet of water in one slip, was not evicted therefrom because of lessor’s failure to maintain such depth of water therein, and hence was properly required to vacate premises for nonpayment of rent by decree in ejectment proceedings. Port Utilities Commission of Charleston v. Marine Oil Co. (S.C. 1934) 173 S.C. 346, 175 S.E. 818. Wharves 9

2. Material breach

The court would not enforce forfeiture of a commercial lease, pursuant to Section 27‑37‑10, for a trivial or immaterial breach, since the decision to permit the landlord to terminate the lease for breach of conditions must be tempered by notions of equity and common sense. Kiriakides v. United Artists Communications, Inc. (S.C. 1994) 312 S.C. 271, 440 S.E.2d 364.

In ruling whether the breach of a commercial lease is material for purposes of forfeiture under Section 27‑37‑10, the court would adopt the standard of Restatement (Second) of Contracts Section 241 (determining when failure to render or offer performance is material). Kiriakides v. United Artists Communications, Inc. (S.C. 1994) 312 S.C. 271, 440 S.E.2d 364.

The record supported the court’s holding that a commercial tenant’s breach of a lease was so immaterial as to render forfeiture under Section 27‑37‑10 inequitable where (1) the tenant owed $4,732 in past‑due rent out of a total yearly rental of $59,379, (2) the tenant’s breach was inadvertent rather than willful or in bad faith, (3) on receiving notice of default, the tenant attempted to cure the default by sending a check to the landlord, (4) the tenant had more than 20 years remaining on the lease, and the value of the tenant’s improvements to the leasehold after depreciation was $1.2 million, and (5) the landlord made no claim of damage by the delay in payment. Kiriakides v. United Artists Communications, Inc. (S.C. 1994) 312 S.C. 271, 440 S.E.2d 364. Landlord And Tenant 921; Landlord And Tenant 923

Even though the failure to timely pay rent resulted from an inadvertent error on the part of the tenant’s bookkeeper, the landlord could eject the tenant, especially where the lease, which stipulated that time was of the essence as to all of its terms, afforded the landlord the option to evict the tenant and terminate the lease if any part of the rent was not paid by a certain date of each month. Hairston v. Carolina Wholesale Furniture Co. (S.C.App. 1987) 291 S.C. 371, 353 S.E.2d 701.

3. Past‑due rent

Landlord is under no obligation to accept past due rent tendered after the ejectment proceeding has been commenced; he has a legal right which accrues upon default. Wright v. Player (S.C. 1958) 233 S.C. 223, 104 S.E.2d 289.

4. Public housing

Public housing tenants are not actually ejected under this section until basic due process requisites are satisfied. Johnson v. Tamsberg (C.A.4 (S.C.) 1970) 430 F.2d 1125.

In order to obtain an eviction order under this section, the Housing Authority must prove its allegations, and there is a full trial in which the tenant may demand a jury. Johnson v. Tamsberg (C.A.4 (S.C.) 1970) 430 F.2d 1125.

**SECTION 27‑37‑20.** Ejectment proceedings.

Any tenant may be ejected in the following manner, to wit: Upon application by the landlord or his agent or attorney any magistrate having jurisdiction shall issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.

HISTORY: 1962 Code Section 41‑102; 1952 Code Section 41‑102; 1946 (44) 2584; 1950 (46) 2305.

CROSS REFERENCES

Application in magistrate’s court for change of venue, see Section 22‑3‑920.

New trials in magistrates’ courts, see Section 22‑3‑990.

Provision that a landlord must proceed pursuant to this chapter when a dwelling unit has been abandoned or the rental agreement has expired and the tenant has left personal property worth over $500 on the premises, see Section 27‑40‑730.

Summary ejectment of trespassers, see Sections 15‑67‑610 et seq.

Venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 279.1, 287.1, 293.1.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1361, 1364.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

Attorney General’s Opinions

Jurisdiction for ejectment of tenants in Richland County under this section is confined to the magistrate within whose territory the defendant resides. 1963‑64 Op. Atty Gen, No. 1623, p 45.

NOTES OF DECISIONS

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1. In general

Additional related cases, as to length of notice to tenant and waiver thereof, see Mayes v Evans (1908) 80 SC 362, 61 SE 216, reh dismd 80 SC 366, 61 SE 657. English v McDowall (1909) 82 SC 282, 64 SE 390. Witte v Cave (1905) 73 SC 15, 52 SE 736. Mayes v Evans (1908) 80 SC 362, 61 SE 216, reh dismd 80 SC 366, 61 SE 657.

Tenant at will, holding over after termination of contract for rent by notice to quit given six months before, could be ejected. Monarch Mills, Lockhart Plant v. Godshall (S.C. 1934) 173 S.C. 286, 175 S.E. 552. Landlord And Tenant 955

A tenant is estopped by his relationship to deny his landlord’s title. Stewart‑Jones Co. v. Shehan (S.C. 1924) 127 S.C. 451, 121 S.E. 374. Landlord And Tenant 650

2. Nature of proceedings

This proceeding is not an action involving title to land, but a summary proceeding. State ex rel. Nesbitt v Marshall (1884) 24 SC 507. Swygert v Goodwin (1890) 32 SC 146, 10 SE 933.

The proceeding provided by this section is not summary in the sense that it deprives the tenant or the landlord of full opportunity to be heard. The courts of magistrate are not courts of general jurisdiction, and a certain informality is to be expected in the trial of cases before them. Wimberly v. Shorter (S.C. 1944) 204 S.C. 558, 30 S.E.2d 593.

3. Protection for tenant

Where parties proceeded under this section as though the issue had been joined and the respondent was permitted to give her version of appellant’s defense but the appellant, although present and demanding her day in court, was denied the opportunity to testify and present her defense because she had filed no answer, it was held that the magistrate erred by adopting a view too technical. Wimberly v. Shorter (S.C. 1944) 204 S.C. 558, 30 S.E.2d 593.

This section protects tenants against caprices of landlords by allowing them to show cause why the rent was not paid when due, and it is only when a tenant fails to show sufficient cause, that such tenant will be dispossessed for failure to pay rent when due. Bowers v. Lide (S.C. 1939) 191 S.C. 505, 5 S.E.2d 283.

4. Jurisdiction of magistrate

Jurisdiction of magistrate is dependent on existence of relation of landlord and tenant. Ex parte Associated Hotels (1928) 144 SC 483, 142 SE 600. Stewart‑Jones Co. v Shehan (1924) 127 SC 451, 121 SE 374.

If it should be properly determined by the judge, sitting as a magistrate, that the landlord‑tenant relation does not exist between plaintiff and defendant, he should dismiss the rule, and his jurisdiction, so far as this summary proceeding of ejectment is concerned, will be at an end. Baldwin v. Baldwin (S.C. 1954) 224 S.C. 429, 79 S.E.2d 459.

In actions between landlord and tenant for the mere possession of realty, the jurisdiction of the magistrate is not affected by the value of the property but, rather, only by the value of the possession. American Oil Co. v. Cox (S.C. 1937) 182 S.C. 419, 189 S.E. 660. Justices Of The Peace 44(2)

What sort of tenancy was created by the parol contract, and whether rent was due, were questions of fact to be determined by the magistrate and not reviewable above. Goodgion v. Latimer (S.C. 1887) 26 S.C. 208, 2 S.E. 1.

5. Determining the landlord and tenant relationship

In a proceeding under this chapter, the county judge erred in issuing an order in which he found as a matter of fact that the relationship of landlord and tenant did not exist and ordering a jury trial to determine the sole question of the defendant’s title to the property by parol gift and by adverse possession, without giving plaintiff opportunity to offer evidence to establish that the relationship of landlord and tenant existed between him and defendant. Baldwin v. Baldwin (S.C. 1954) 224 S.C. 429, 79 S.E.2d 459.

In a summary proceeding to recover possession of the premises, it is competent for the magistrate to determine as a fact whether the relationship of landlord and tenant exists. Stewart‑Jones Co. v. Shehan (S.C. 1924) 127 S.C. 451, 121 S.E. 374. Landlord And Tenant 1769

6. Necessity for a contract

In regard to existence of relation of landlord and tenant, a written contract of sale may be rescinded, and a rent contract substituted, even by parol. Lewis v Cooley (1908) 81 SC 461, 62 SE 868. Fripp v Fripp (1839) 14 SC Eq 84. Moseley v Witt (1908) 79 SC 141, 60 SE 520.

The relation of landlord and tenant was held established under covenant and power of sale contained in mortgage. Brewster v McNab (1892) 36 SC 274, 15 SE 233. Rakestraw v Floyd (1899) 54 SC 288, 32 SE 419.

Agreement whereby defendants agreed to operate hotel property and deduct certain expenses from gross receipts, and whereby defendants were to receive fifty per cent of net profit for services, was held not to establish relation of landlord and tenant necessary to give magistrate jurisdiction of proceeding under this section. Ex parte Associated Hotels (S.C. 1928) 144 S.C. 483, 142 S.E. 600.

Without a contract between the parties, expressed or implied, the relationship of landlord and tenant cannot exist. Stewart‑Jones Co. v. Shehan (S.C. 1924) 127 S.C. 451, 121 S.E. 374. Landlord And Tenant 501

7. Where another action is pending

Where a notice to quit or rule to show cause was served, it not appearing upon the face thereof that another action was pending between the same parties for the same cause, it was held that objection should have been made by answer and not by demurrer. Wimberly v. Shorter (S.C. 1944) 204 S.C. 558, 30 S.E.2d 593. Abatement And Revival 17

**SECTION 27‑37‑30.** Service of rule; posting and mailing requirements.

(A) The copy of the rule provided for in Section 27‑37‑20 may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State. The methods of service described in subsections (B) and (C) may be used as alternatives to the method of service described in this subsection.

(B) When no person can be found in possession of the premises, and the premises have remained abandoned, as defined in Section 27‑40‑730 for residential rental agreements and in Section 27‑35‑150 for nonresidential rental agreements, for a period of fifteen days or more immediately before the date of service, the copy of the rule may be served by leaving it affixed to the most conspicuous part of the premises.

(C) When service as provided in subsection (A) has been attempted unsuccessfully two times in the manner described in item (1), a copy of the rule may be served by affixing both it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in item (2):

(1) Each of the two attempts to serve the defendant must be separated by a minimum of forty‑eight hours and must occur at times of day separated by a minimum of eight hours. The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the premises.

(2) For mailing by ordinary mail to be considered to complete service under this item, it must be accomplished by placing a copy of the rule and documentation of the prior attempts at service in an envelope in the presence of the clerk of the magistrates court. The clerk is responsible for verifying that the envelope is addressed to the defendant at the address shown in the rule as the rental premises of the defendant or another address for receipt of mail furnished in writing by the tenant to the landlord, that the envelope contains the necessary documents, and that the clerk has placed the sealed and stamped envelope in the United States mail. The clerk’s verification must be made a part of the record in the case, and service by ordinary mail is not considered complete without the clerk’s verification. A fee as provided for in Section 8‑21‑1010(14) must be collected by the magistrate or his clerk for the verification and mailing in this item.

(3) Mailing of the rule constitutes service when the requirements of items (1) and (2) have been met and ten days have elapsed from the time of mailing. If these requirements have been met, the specified time period for the tenant to show cause why he should not be ejected as provided in Section 27‑37‑20 begins to run on the eleventh day after mailing. However, if the tenant contacts the magistrates court prior to the eleventh day, the specified time period for the tenant to show cause as provided in Section 27‑37‑20 must begin to run at the time of contact.

HISTORY: 1962 Code Section 41‑103; 1952 Code Section 41‑103; 1946 (44) 2584; 1999 Act No. 61, Section 1; 2000 Act No. 409, Section 6.

CROSS REFERENCES

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

Provision that a landlord must proceed pursuant to this chapter when a dwelling unit has been abandoned or the rental agreement has expired and the tenant has left personal property worth over $500 on the premises, see Section 27‑40‑730.

Library References

Landlord and Tenant 285(1), 291(2), 297(3), 304(2).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1348, 1350 to 1351, 1356, 1372, 1375.

**SECTION 27‑37‑40.** Tenant ejected on failure to show cause.

If the tenant fails to appear and show cause within the aforesaid ten days then the magistrate shall issue a warrant of ejectment and the tenant shall be ejected by his regular or special constable or by the sheriff of the county.

HISTORY: 1962 Code Section 41‑104; 1952 Code Section 41‑104; 1946 (44) 2584; 1950 (46) 2305.

CROSS REFERENCES

Execution of a warrant of ejectment pursuant to this section in the event that a tenant fails to make rental payments as required by his undertaking for the purpose of staying ejectment, see Section 27‑40‑800.

Issuance of a warrant of ejectment in a landlord’s action for possession in the event that the tenant does not appear and show cause within ten days, see Section 27‑40‑790.

Venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 285(6), 291(17), 311.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1356 to 1357, 1392 to 1394.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

Attorney General’s Opinions

A judgment in an ejectment action does not authorize an officer to use physical force to remove the property and person in possession of the disputed premises; however, a magistrate may in his discretion after adjudication of the rights of the parties issue a Writ of Possession which would authorize a proper officer to use such force as is necessary to put the plaintiff in possession. 1979 Op. Atty Gen, No. 79‑7, p 13.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Long v. McMillan (S.C. 1955) 226 S.C. 598, 86 S.E.2d 477.

This section clearly contemplates the issuance of a written warrant, and an oral pronouncement of the magistrate cannot reasonably be deemed to be the equivalent of this statutory requirement. Thompson v. Rutland (S.C. 1954) 225 S.C. 485, 83 S.E.2d 163.

**SECTION 27‑37‑50.** Change of venue.

The magistrate may grant a change of venue in an ejectment case as in any other civil case on a proper showing.

HISTORY: 1962 Code Section 41‑105; 1952 Code Section 41‑105; 1946 (44) 2584.

CROSS REFERENCES

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

Venue, generally, see Sections 15‑7‑10 et seq.

Library References

Venue 36.

Westlaw Topic No. 401.

C.J.S. Venue Sections 131 to 141.

**SECTION 27‑37‑60.** Trial of issue.

If the tenant appear and contest ejectment the magistrate shall forthwith hear and determine the case as any other civil case, allowing trial by jury if demanded by either party.

HISTORY: 1962 Code Section 41‑106; 1952 Code Section 41‑106; 1946 (44) 2584.

CROSS REFERENCES

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

Library References

Landlord and Tenant 285(1), 291(0.5), 309.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1348, 1350 to 1351, 1356, 1390 to 1391.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Baldwin v. Baldwin (S.C. 1954) 224 S.C. 429, 79 S.E.2d 459.

**SECTION 27‑37‑70.** Designation of parties in ejectment.

In any trial before the magistrate in an ejectment case either with or without jury the landlord may be designated as plaintiff and the tenant as defendant.

HISTORY: 1962 Code Section 41‑107; 1952 Code Section 41‑107; 1946 (44) 2584.

CROSS REFERENCES

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

Library References

Landlord and Tenant 285(3), 291(8), 303(3).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1352 to 1353, 1356, 1383.

**SECTION 27‑37‑80.** Jury trial.

Either landlord or tenant may demand trial by jury. In such case a jury shall be summoned and a jury trial had as in any other civil case. Upon the testimony offered, under instructions by the magistrate as to the law, the jury shall find for either the landlord or tenant as in any other civil case.

HISTORY: 1962 Code Section 41‑108; 1952 Code Section 41‑108; 1946 (44) 2584.

CROSS REFERENCES

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

Juries and jurors in circuit courts, see Sections 14‑7‑10 et seq.

Library References

Jury 14(1), 19(1).

Westlaw Topic No. 230.

C.J.S. Juries Sections 22, 45, 50, 53 to 57, 60 to 68, 71 to 73, 79, 83, 99, 107, 126 to 127.

C.J.S. Summary Proceedings Section 8.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 6, Forms and Proceedings.

**SECTION 27‑37‑90.** New trial.

When a jury is had in an ejectment case the magistrate may grant a new trial as in any other civil case.

HISTORY: 1962 Code Section 41‑109; 1952 Code Section 41‑109; 1946 (44) 2584.

CROSS REFERENCES

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

Library References

New Trial 2.

Westlaw Topic No. 275.

C.J.S. New Trial Section 5.

**SECTION 27‑37‑100.** Effect of verdict for plaintiff.

If the verdict be for the plaintiff the magistrate shall within five days issue a writ of ejectment and the tenant shall be ejected by the constable or special constable or the sheriff of the county.

HISTORY: 1962 Code Section 41‑110; 1952 Code Section 41‑110; 1946 (44) 2584.

CROSS REFERENCES

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

Provision that a landlord must proceed pursuant to this chapter when a dwelling unit has been abandoned or the rental agreement has expired and the tenant has left personal property worth over $500 on the premises, see Section 27‑40‑730.

Library References

Landlord and Tenant 285(6), 291(17), 311.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1356 to 1357, 1392 to 1394.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Horn v. Blackwell (S.C. 1948) 212 S.C. 480, 48 S.E.2d 322.

**SECTION 27‑37‑110.** Effect of verdict for defendant.

If the verdict be for the defendant then the tenant shall remain in possession until (a) the termination of his tenancy by agreement or operation of law, (b) failure or neglect to pay rent or (c) ejected in another proceeding under this chapter or by the judgment of a court of competent jurisdiction.

HISTORY: 1962 Code Section 41‑111; 1952 Code Section 41‑111; 1946 (44) 2584.

CROSS REFERENCES

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

Library References

Landlord and Tenant 285(6), 291(17), 311.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1356 to 1357, 1392 to 1394.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

**SECTION 27‑37‑120.** Appeal.

Either party may appeal in an ejectment case and such appeal shall be heard and determined as other appeals in civil cases from the magistrate’s court.

HISTORY: 1962 Code Section 41‑112; 1952 Code 41‑112; 1946 (44) 2584.

CROSS REFERENCES

Appeals generally, see Sections 18‑1‑10 et seq.

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

Library References

Landlord and Tenant 285(7), 291(18), 315(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1355 to 1356, 1399 to 1402, 1483 to 1484.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Wright v Ritz Theatre Co. (1947) 211 SC 161, 44 SE2d 308. Laughlin v Livingston (1958) 233 SC 81, 103 SE2d 741.

Although Section 27‑33‑40 gives concurrent jurisdiction to the Circuit Courts and to Magistrates in ejectment proceedings, the Circuit Courts still have appellate jurisdiction over ejectment cases initially heard by a Magistrate, pursuant to Sections 27‑37‑120, 14‑5‑340, and 18‑7‑170. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp. (S.C.App. 1984) 280 S.C. 232, 312 S.E.2d 20. Justices Of The Peace 141(1)

Stated in Horn v. Blackwell (S.C. 1948) 212 S.C. 480, 48 S.E.2d 322.

**SECTION 27‑37‑130.** Bond required to stay ejectment on appeal.

An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby. In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate.

HISTORY: 1962 Code Section 41‑113; 1952 Code Section 41‑113; 1946 (44) 2584; 1950 (46) 2305.

CROSS REFERENCES

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

Library References

Landlord and Tenant 285(7), 291(18), 315(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1355 to 1356, 1399 to 1402, 1483 to 1484.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

Forms

South Carolina Litigation Forms and Analysis Section 40:2 , Stay of Proceedings Pending Appeal and Security.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Kirby v. Gulf Oil Corp. (S.C. 1956) 230 S.C. 11, 94 S.E.2d 21.

Applied in Wheeler v. Hyler (S.C. 1956) 228 S.C. 584, 91 S.E.2d 265.

Dismissal of an appeal by a tenant is mandatory unless bond is filed within the time stipulated. This requirement does not violate SC Const, Art 5, Section 23 (see now Section 26). Horn v. Blackwell (S.C. 1948) 212 S.C. 480, 48 S.E.2d 322.

That part of this section which provides for an appeal bond is not unconstitutional in the sense that it permits a magistrate to require a bond in excess of $100.00, for it bears no direct or necessary relation to jurisdiction. American Oil Co. v. Cox (S.C. 1937) 182 S.C. 419, 189 S.E. 660.

**SECTION 27‑37‑140.** Action of tenant wrongfully dispossessed.

In case any tenant is wrongfully dispossessed he may have an action for damages against the landlord.

HISTORY: 1962 Code Section 41‑114; 1952 Code Section 41‑114; 1946 (44) 2584.

CROSS REFERENCES

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

Library References

Landlord and Tenant 278, 278.17, 292, 318.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1328, 1361, 1398, 1403 to 1404, 1485, 1487 to 1491, 1493 to 1496.

NOTES OF DECISIONS

In general 1

1. In general

This section provides that a tenant wrongfully dispossessed shall have legal action for his damages, and the tenant cannot by injunction prevent cancellation of lease and compel acceptance of rent. Trakas v. Mitchell (S.C. 1918) 111 S.C. 160, 97 S.E. 245.

A judgment dispossessing a tenant in a proceeding under this section, so long as it is unreversed, estops the tenant from claiming damages for the eviction, except for excessive force used therein, though the statute provides that a tenant wrongfully dispossessed shall have an action for damages. Williams v. Columbia Mills Co. (S.C. 1915) 100 S.C. 363, 85 S.E. 160.

Under this section punitive damages may be allowed. Williams v. Columbia Mills Co. (S.C. 1915) 100 S.C. 363, 85 S.E. 160.

**SECTION 27‑37‑150.** Accrual of rent after institution of proceedings.

After the commencement of ejectment proceedings by the issuance of a rule to vacate or to show cause as herein provided, the rental for the use and occupancy of the premises involved shall continue to accrue so long as the tenant remains in possession of the premises, at the same rate as prevailed immediately prior to the issuance of such rule, and the tenant shall be liable for the payment of such rental, the collection of which may be enforced by distress as herein provided with respect to other rents. But the acceptance by the landlord of any rent, whether it shall have accrued at the time of issuing such rule or shall subsequently accrue, shall not operate as a waiver of the landlord’s right to insist upon ejectment, nor as a renewal or extension of the tenancy, but the rights of the parties as they existed at the time of the issuance of the rule shall control.

HISTORY: 1962 Code Section 41‑115; 1952 Code Section 41‑115; 1950 (46) 2305.

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.

**SECTION 27‑37‑155.** Commercial lease contract claims and counterclaims.

(A) In any action involving a commercial lease where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the lease agreement:

(1) the tenant is required to pay the landlord all rent which becomes due after the issuance of a written rule requiring the tenant to vacate or show cause as rent becomes due and the landlord is required to provide the tenant with a written receipt for each payment except when the tenant pays by check; and

(2) the tenant is required to pay the landlord all rent allegedly owed prior to the issuance of the rule; provided, however, that in lieu of the payment the tenant may be allowed to submit to the court a receipt and cancelled check, or both, indicating that payment has been made to the landlord.

(B)(1) In the event a jury trial is requested and upon motion of either party or upon his own motion, the magistrate may order that the commercial lease ejectment case be heard at the next term of court following the tenant’s appearance.

(2) In the event that the amount of rent is in controversy, the court shall preliminarily determine the amount of rent to be paid to the landlord.

(3) If the tenant appears in response to the rule and alleges that rent due as provided by Section 27‑37‑150 and this section has been paid, the court shall determine the issue. If the tenant has failed to comply with Section 27‑37‑150 and this section, the court shall issue a warrant of ejectment and the landlord must be placed in full possession of the premises by the sheriff, deputy, or constable.

(4) If the amount of rent due is determined at final adjudication to be less than alleged by the landlord, decision must be entered for the tenant if the court determines that the tenant has complied fully with the provisions of Section 27‑37‑150, this section, and the lease agreement.

(5) If the court orders that the tenant pay all rent due and accruing as of and during the pendency of the action as provided by Section 27‑37‑150 and this section, the order may require the payments to be made (a) directly to the commercial landlord or to the clerk of court, to be held until final disposition of the case, or (b) through the magistrate’s office. If payments are to be made through the magistrate’s office, a fee of three percent of the rental payment must be added to the amount paid through the office and the fee of three percent shall be retained in the collecting magistrate’s office to defray the costs of collection. If the tenant fails to make a payment as provided in Section 27‑37‑150 and this section, the tenant’s failure to comply entitles the landlord to execution of the judgment for possession and, upon application of the landlord, the magistrate shall issue a warrant of ejectment and the landlord must be placed in full possession of the premises by the sheriff, deputy, or constable.

HISTORY: 2006 Act No. 361, Section 1, eff June 9, 2006.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.

**SECTION 27‑37‑160.** Execution of writ of ejectment.

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.

HISTORY: 1986 Act No. 336, Section 3; 1994 Act No. 465, Section 1.

CROSS REFERENCES

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

Library References

Landlord and Tenant 285(6), 291(17), 311.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1335 to 1336, 1356 to 1357, 1392 to 1394.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Improvements Section 3, When an Action for Betterments May Arise.

S.C. Jur. Landlord and Tenant Section 57, The Statutory Procedure.