CHAPTER 40

Residential Landlord and Tenant Act

CROSS REFERENCES

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

ARTICLE 1

General Provisions and Definitions

Subarticle I

Short Title, Construction, Application, and Subject Matter of Chapter

**SECTION 27‑40‑10.** Short title.

 This chapter is known and may be cited as the South Carolina Residential Landlord and Tenant Act.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Application of this chapter to tenancies in manufactured home parks, see Section 27‑47‑110.

Residential rental agreement of a manufactured home subject to this chapter not subject to regulation of subleasing and loan assumption of motor vehicle provisions, see Section 37‑13‑10.

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

Library References

Landlord and Tenant 3.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 7, 342.

RESEARCH REFERENCES

Encyclopedias

83 Am. Jur. Trials 385, How to Survive Legally as a Landlord.

Forms

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

South Carolina Legal and Business Forms Section 14:25 , Residential Rental Agreement‑Unfurnished.

South Carolina Legal and Business Forms Section 14:26 , Residential Rental Agreement‑Furnished.

LAW REVIEW AND JOURNAL COMMENTARIES

Landlord’s duty, on tenant’s failure to occupy, or abandonment of, premises, to mitigate damages by accepting or procuring another tenant. 75 ALR 5th 1.

A lawyer’s guide to the South Carolina Residential Landlord and Tenant Act. 39 S.C. L. Rev. 493 (Spring 1988).

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

NOTES OF DECISIONS

In general 1

1. In general

The Residential Landlord and Tenant Act, Sections 27‑40‑10 et seq., controlled an action by a tenant against a landlord where the tenant slipped and fell in the common grounds. Pryor v. Northwest Apartments, Ltd. (S.C.App. 1996) 321 S.C. 524, 469 S.E.2d 630.

Although the Residential Landlord and Tenant Act, Sections 27‑40‑10 et seq., creates a new cause of action not found at common law, the court must look to the common law for guidance in analyzing new causes of action. Pryor v. Northwest Apartments, Ltd. (S.C.App. 1996) 321 S.C. 524, 469 S.E.2d 630. Landlord And Tenant 1228(1)

The residential Landlord‑Tenant Act (Sections 27‑40‑10 et seq.) does not impose a duty on a landlord to provide protection to tenants against the criminal activity of others. Cramer v. Balcor Property Management, Inc. (S.C. 1994) 312 S.C. 440, 441 S.E.2d 317. Landlord And Tenant 1231

The Residential Landlord and Tenant Act by express words creates a cause of action in tort in favor of a tenant of residential property against his or her landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition. It was the intent of the legislature to abrogate the existing law providing for landlord immunity from tort liability for injuries sustained on rented residential premises and to provide for landlord liability. The provisions of Sections 27‑40‑20, 27‑40‑50 and 27‑40‑610 in plain words reflect the intent of the legislature to create a cause of action in favor of the tenant and against the landlord for failure, after notice, to keep in good repair. Watson v. Sellers (S.C.App. 1989) 299 S.C. 426, 385 S.E.2d 369.

**SECTION 27‑40‑20.** Purposes; rules of construction.

 (a) This chapter must be liberally construed and applied to promote its underlying purposes and policies.

 (b) Underlying purposes and policies of this chapter are:

 (1) to simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants;

 (2) to encourage landlords and tenants to maintain and improve the quality of housing.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Residential rental agreement of a manufactured home subject to this chapter not subject to regulation of subleasing and loan assumption of motor vehicle provisions, see Section 37‑13‑10.

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

Library References

Landlord and Tenant 3, 37.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 7, 342, 412 to 415, 417 to 419, 421, 423 to 431, 434 to 435, 439 to 440, 465 to 466.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 34, Leases Governed by the Rlta.

NOTES OF DECISIONS

In general 1

1. In general

Residential Landlord and Tenant Act does not impose duty on landlord to protect tenants from criminal activity. Cooke v. Allstate Management Corp., 1990, 741 F.Supp. 1205. Landlord And Tenant 1231

The South Carolina Residential Landlord and Tenant Act (RLTA), Sections 27‑40‑10 et seq., was not applicable to an action by a tenant against a landlord arising from a dog bite attack which occurred prior to the Governor’s signing of the act when prior law would not impose a duty of care on a landlord who, prior to the attack, knew of the dog’s vicious propensities, had the right to cancel the dog‑owner tenant’s month to month lease, and failed to do so. Mitchell by Mitchell v. Bazzle (S.C.App. 1991) 304 S.C. 402, 404 S.E.2d 910, certiorari dismissed 306 S.C. 407, 412 S.E.2d 416.

The Residential Landlord and Tenant Act by express words creates a cause of action in tort in favor of a tenant of residential property against his or her landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition. It was the intent of the legislature to abrogate the existing law providing for landlord immunity from tort liability for injuries sustained on rented residential premises and to provide for landlord liability. The provisions of Sections 27‑40‑20, 27‑40‑50 and 27‑40‑610 in plain words reflect the intent of the legislature to create a cause of action in favor of the tenant and against the landlord for failure, after notice, to keep in good repair. Watson v. Sellers (S.C.App. 1989) 299 S.C. 426, 385 S.E.2d 369.

**SECTION 27‑40‑30.** Supplementary rules of law applicable.

 Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement the provisions of this chapter.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 3, 37.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 7, 342, 412 to 415, 417 to 419, 421, 423 to 431, 434 to 435, 439 to 440, 465 to 466.

RESEARCH REFERENCES

Encyclopedias

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

**SECTION 27‑40‑40.** Construction against implicit repeal.

 This chapter being a general chapter intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Statutes 161.

Westlaw Topic No. 361.

C.J.S. Statutes Sections 288, 293, 296 to 297.

**SECTION 27‑40‑50.** Administration of remedies; enforcement.

 (a) The remedies provided by this chapter must be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

 (b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

NOTES OF DECISIONS

In general 1

1. In general

The Residential Landlord and Tenant Act by express words creates a cause of action in tort in favor of a tenant of residential property against his or her landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition. It was the intent of the legislature to abrogate the existing law providing for landlord immunity from tort liability for injuries sustained on rented residential premises and to provide for landlord liability. The provisions of Sections 27‑40‑20, 27‑40‑50 and 27‑40‑610 in plain words reflect the intent of the legislature to create a cause of action in favor of the tenant and against the landlord for failure, after notice, to keep in good repair. Watson v. Sellers (S.C.App. 1989) 299 S.C. 426, 385 S.E.2d 369.

**SECTION 27‑40‑60.** Settlement of disputed claim or right.

 A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Compromise and Settlement 3, 7.1.

Westlaw Topic No. 89.

C.J.S. Compromise and Settlement Sections 1, 5, 18, 29, 50, 55 to 56.

Subarticle II

Scope and Jurisdiction

**SECTION 27‑40‑110.** Territorial application.

 This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this State.

HISTORY: 1986 Act No. 336, Section 1.

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 4, Landlord‑Tenant Relationships Governed by the Rlta.

**SECTION 27‑40‑120.** Exclusions from application of chapter.

 The following arrangements are not governed by this chapter:

 (1) residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

 (2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

 (3) occupancy by a member or a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

 (4) transient occupancy in a hotel, motel, or other accommodations subject to the sales tax on accommodations as provided by Section 12‑36‑920;

 (5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

 (6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

 (7) occupancy under a rental agreement covering the premises used by the occupant primarily for agricultural purposes;

 (8) occupancy under a rental agreement in a premises regulated by the provisions of Chapter 32 of Title 27 of the 1976 Code (Vacation Time Sharing Plan Act).

 (9) residence, whether temporary or not, at a charitable or emergency protective shelter, public or private.

HISTORY: 1986 Act No. 336, Section 1; 1998 Act No. 382, Section 1.

Cross References

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

Library References

Landlord and Tenant 3.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 7, 342.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 14:40 , Indemnity for Occupancy Prior to Closing of Purchase Agreement.

Attorney General’s Opinions

Whether the Lodging Establishment Act of the Residential Landlord Tenant Act would apply to guests of hotels, motels or other lodging who rent by the month would require a determination of whether such individuals are considered transients. 1994 Op. Atty Gen, No. 94‑44, p. 100.

Section 27‑40‑120, which excludes from the State Residential Landlord and Tenant Act two groups of individuals, most probably are not violative of equal protection guarantees, and a court would probably uphold as rational a provision of that Act establishing the presumption that a landlord’s conduct in certain instances was in retaliation against a tenant. 1986 Op. Atty Gen, No. 86‑13, p 55.

**SECTION 27‑40‑130.** Jurisdiction and service of process.

 (a) The circuit courts and magistrate courts of this State shall exercise concurrent jurisdiction over any landlord with respect to any conduct in this State governed by this chapter or with respect to any claim arising from a transaction subject to this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over a landlord may be acquired in a civil action or proceeding instituted in the court of common pleas or magistrate court by the service of process in the manner provided by this section.

 (b) If a landlord is not a resident of this State or is a corporation not authorized to do business in this State and engaged in any conduct in this State governed by this chapter, or engaged in a transaction subject to this chapter, he may designate an agent upon whom service of process may be made in this State. The agent must be a resident of this State or a corporation authorized to do business in this State. The designation must be in writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail requiring a signed receipt to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section must be filed with the court of the county wherein the action is instituted on or before the return day of the process, if any, or within any further time the court allows.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Application of provisions of this section with respect to claim arising from transaction governed by Chapter 47 of Title 27, pertaining to manufactured home park tenancies, see Section 27‑47‑130.

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

Attorney General’s Opinions

The magistrate courts have concurrent jurisdiction with the circuit courts over a landlord as to any conduct governed by the State Residential Landlord and Tenant Act, including those cases brought pursuant to the Act where damages or attorney’s fees exceed the typical one thousand dollar jurisdictional limit established by Section 22‑3‑10. 1987 Op. Atty Gen, No. 87‑10, p 45.

Subarticle III

General Definitions and Principles Interpretation; Notice

**SECTION 27‑40‑210.** General definitions.

 Subject to additional definitions contained in subsequent articles of this chapter which apply to specific articles or parts of this chapter, and unless the context otherwise requires, in this chapter:

 (1) “action” includes recoupment, counterclaim, set‑off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

 (2) “building and housing codes” include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premise, or dwelling unit;

 (3) “dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes landlord‑owned mobile homes. Property that is leased for the exclusive purpose of being renovated by the lessee is not considered a dwelling unit within the meaning of this chapter;

 (4) “fair‑market rental value” means the actual periodic rental payment for comparable rental property to which a willing landlord and a willing tenant would agree. In determining the fair‑market rental value, the court may consider appraisals offered by the tenant, landlord, realty experts, licensed appraisers, and other relevant evidence;

 (5) “good faith” means honesty in fact in the conduct of the transaction concerned;

 (6) “landlord” means the owner, lessor, or sublessor of the premises, and it also means a manager of the premises who fails to disclose as required by Section 27‑40‑420;

 (7) “organization” includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity;

 (8) “owner” means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagee in possession;

 (9) “person” includes an individual or organization;

 (10) “premises” means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant;

 (11) “rent” means the consideration payable for use of the premises including late charges whether payable in lump sum or periodic payments, excluding security deposits or other charges;

 (12) “rental agreement” means all agreements, written or oral, and valid rules and regulations adopted under Section 27‑40‑520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

 (13) “roomer” means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure;

 (14) “single family residence” means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit;

 (15) “tenant” means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

 (16) “wilful” means an attempt to intentionally avoid obligations under the rental agreement or the provisions of this chapter;

 (17) “essential services” means sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

 (18) “security deposit” means a monetary deposit from the tenant to the landlord which is held in trust by the landlord to secure the full and faithful performance of the terms and conditions of the lease agreement as provided in Section 27‑40‑410.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Sections 1, 2.

CROSS REFERENCES

Residential rental agreement of a manufactured home subject to this chapter not subject to regulation of subleasing and loan assumption of motor vehicle provisions, see Section 37‑13‑10.

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

Library References

Landlord and Tenant 3.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 7, 342.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 4, Landlord‑Tenant Relationships Governed by the Rlta.

S.C. Jur. Landlord and Tenant Section 6, Written and Oral Leases Governed by the Rlta.

S.C. Jur. Landlord and Tenant Section 32, Delivery of Possession.

Forms

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

Notes of Decisions

Single‑family residence 1

1. Single‑family residence

Mobile home, with numerous extensions and additions, which was previously located on residential lot, did not constitute “single‑family residence” as term was used in title insurance policy, and, thus, zoning regulation preventing construction of site‑built house purchasers of lot intended to construct on lot triggered title coverage; term “single‑family residence” was ambiguous, and, thus, to be construed against insurer, as drafter, and, thus, purchasers were entitled to coverage because they could not use property for “single‑family residence.” Lyons v. Fidelity Nat. Title Ins. Co (S.C.App. 2015) 415 S.C. 115, 781 S.E.2d 126, rehearing denied, vacated pursuant to settlement, certiorari dismissed. Insurance 2625

**SECTION 27‑40‑220.** Obligation of good faith.

 Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performances or enforcement.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 45.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 412, 445 to 456, 461.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 50, Good Faith.

**SECTION 27‑40‑230.** Unconscionability.

 (a) If the court as a matter of law, finds:

 (1) a rental agreement was unconscionable when made, the court may refuse to enforce the rental agreement;

 (2) any provision of a rental agreement was unconscionable when made, the court may enforce the remainder of the agreement without the unconscionable provision or limit the application of any unconscionable provision to avoid an unconscionable result; or

 (3) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable when made, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

 (b) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Determination of unconscionability under this section as applying to matters governed by Chapter 47 of Title 27 pertaining to manufactured home park tenancies, see Section 27‑47‑230.

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

Library References

Landlord and Tenant 24(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 330, 341, 345 to 354, 357.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 50, Good Faith.

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

**SECTION 27‑40‑240.** Notice.

 (A) A person has notice of a fact if:

 (1) the person has actual knowledge of it;

 (2) the person has received a notice or notification of it; or

 (3) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person “knows” or “has knowledge” of a fact if he has actual knowledge of it.

 (B) 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.

 (C) “Notice”, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to the individual’s attention if the organization had exercised reasonable diligence.

 (D) The time within which an act is to be done must be computed by reference to South Carolina Rules of Civil Procedure.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 3.

CROSS REFERENCES

Notice requirements of this section as applicable to matters arising under Chapter 47 of Title 27 pertaining to manufactured home park tenancies, see Section 27‑47‑240.

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

Library References

Notice 1.

Westlaw Topic No. 277.

C.J.S. Notice Sections 2 to 3, 9.

RESEARCH REFERENCES

Encyclopedias

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

Subarticle IV

General Provisions

**SECTION 27‑40‑310.** Terms and conditions of rental agreement.

 (a) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

 (b) In absence of agreement, the tenant shall pay as rent the fair‑market rental value for the use and occupancy of the dwelling unit.

 (c) Rent is payable without demand or notice at the time and place agreed upon by the parties. Unless the tenant is otherwise notified in writing, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent is uniformly apportionable from day to day.

 (d) Unless the rental agreement fixes a definite term, the tenancy is week to week in case of a roomer who pays weekly rent and in all other cases month to month.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Applicability of this section in the event of a landlord’s consent to a tenant’s holdover, see Section 27‑40‑770.

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

Library References

Landlord and Tenant 24(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 330, 341, 345 to 354, 357.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 4, Landlord‑Tenant Relationships Governed by the Rlta.

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

S.C. Jur. Landlord and Tenant Section 29, Leases Governed by the Rlta.

NOTES OF DECISIONS

In general 1

1. In general

Landlord and tenant relationship existed between owner of property on which dog owners lived and dog owners being sued by mother of minor bitten by dog, for purposes of the Residential Landlord and Tenant Act (RLTA), though dog owners paid no rent, where owner of property and dog owners had a verbal agreement whereby dog owners were allowed to live on property. Bruce v. Durney (S.C.App. 2000) 341 S.C. 563, 534 S.E.2d 720, rehearing denied. Animals 66.5(8)

The payment of rent is not required by the Residential Landlord and Tenant Act (RLTA) to constitute a valid landlord/tenant relationship. Bruce v. Durney (S.C.App. 2000) 341 S.C. 563, 534 S.E.2d 720, rehearing denied. Landlord And Tenant 501; Landlord And Tenant 1420

**SECTION 27‑40‑320.** Effect of unsigned or undelivered rental agreement.

 (a) If the landlord does not sign and deliver a written rental agreement which has been signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

 (b) If the tenant does not sign and deliver a written rental agreement which has been signed and delivered to the tenant by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

 (c) If a rental agreement given effect by the operation of this section provides for a term longer than one year, it is effective for only one year.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 25, 25.3.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 330, 358, 360 to 369.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 4, Landlord‑Tenant Relationships Governed by the Rlta.

S.C. Jur. Landlord and Tenant Section 6, Written and Oral Leases Governed by the Rlta.

**SECTION 27‑40‑330.** Prohibited provisions in rental agreements.

 (a) A rental agreement may not provide that the tenant:

 (1) agrees to waive or forego rights or remedies under this chapter;

 (2) authorizes any person to confess judgment on a claim arising out of the rental agreement;

 (3) agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

 (b) A provision prohibited by subsection (a) included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited and attempts to exercise the rights created by the agreement, the tenant may recover in addition to his actual damages an amount not to exceed the security deposit and reasonable attorney’s fees. If a landlord maliciously uses a rental agreement containing provisions known by him to be prohibited and attempts to exercise the rights created thereby, the tenant may recover in addition to his actual damages an amount not to exceed three months’ periodic rent and reasonable attorney’s fees.

 (c) The provisions of this section shall not operate so as to invalidate bona fide liquidated damage provisions which shall establish the amount of damages for loss of rent resulting from a premature termination of a lease.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 24(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 330, 341, 345 to 354, 357.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

Forms

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

LAW REVIEW AND JOURNAL COMMENTARIES

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

**SECTION 27‑40‑340.** Separation of rents and obligations to maintain property forbidden.

 A rental agreement, assignment, conveyance, trust deed, mortgage, or security instrument may not permit the receipt of rent absent the obligation to comply with Section 27‑40‑440(a).

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 187, 188.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1006, 1009, 1011.

ARTICLE 3

Landlord Obligations

**SECTION 27‑40‑410.** Security deposits; prepaid rent.

 (a) Upon termination of the tenancy, property or money held by the landlord as security must be returned less amounts withheld by the landlord for accrued rent and damages which the landlord has suffered by reason of the tenant’s noncompliance with Section 27‑40‑510. Any deduction from the security/rental deposit must be itemized by the landlord in a written notice to the tenant together with the amount due, if any, within thirty days after termination of the tenancy and delivery of possession and demand by the tenant, whichever is later. The tenant shall provide the landlord in writing with a forwarding address or new address to which the written notice and amount due from the landlord may be sent. If the tenant fails to provide the landlord with the forwarding or new address, the tenant is not entitled to damages under this subsection provided the landlord (1) had no notice of the tenant’s whereabouts and (2) mailed the written notice and amount due, if any, to the tenant’s last known address.

 (b) If the landlord fails to return to the tenant any prepaid rent or security/rental deposit with the notice required to be sent by the landlord pursuant to subsection (a), the tenant may recover the property and money in an amount equal to three times the amount wrongfully withheld and reasonable attorney’s fees.

 (c) If a landlord (1) rents more than four adjoining dwelling units on the premises, and (2) imposes different standards for calculating security/rental deposits required of different tenants on the premises, then, prior to the consummation of the rental agreement, the landlord shall either post in a conspicuous place on the premises, or at the place at which rental is paid a statement clearly indicating the standards by which such security/rental deposits are calculated, or shall provide each prospective tenant with a statement setting forth the standards. If a landlord fails to comply with this subsection as to a tenant, the difference between the security/rental deposit required of the tenant and the lowest security/rental deposit required of any other tenant of a comparable dwelling unit on the premises is not subject to deductions for damages by reason of the tenant’s noncompliance with Section 27‑40‑510.

 (d) This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter or otherwise.

 (e) Subject to the provisions of Section 27‑40‑450, the holder of the landlord’s interest in the premises at the time of the termination of the tenancy is bound by this section.

HISTORY: 1986 Act No. 336, Section 1; 1994 Act No. 498, Section 1.

CROSS REFERENCES

Disposition of security in the event a tenant terminates a rental agreement on account of damage or destruction of the premises by fire or casualty, see Section 27‑40‑650.

Disposition of security in the event a tenant terminates a rental agreement on account of his unlawful removal or exclusion from the premises by the landlord, see Section 27‑40‑660.

Effect of a sale of premises upon the landlord’s liability for security recoverable by the tenant under this section, see Section 27‑40‑450.

A landlord’s duty to return security recoverable by a tenant under this section if a rental agreement is terminated, see Section 27‑40‑610.

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

Library References

Landlord and Tenant 184.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 990 to 997.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

Forms

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

South Carolina Legal and Business Forms Section 14:25 , Residential Rental Agreement‑Unfurnished.

South Carolina Legal and Business Forms Section 14:26 , Residential Rental Agreement‑Furnished.

South Carolina Legal and Business Forms Section 14:36 , Residential Lease With Option to Purchase.

South Carolina Legal and Business Forms Section 14:37 , Residential Lease‑Prior to Closing.

South Carolina Legal and Business Forms Section 14:82 , Security Deposit‑Residential.

Treatises and Practice Aids

50 Causes of Action 2d 333, Cause of Action by Tenant to Recover Security Deposit from Landlord.

NOTES OF DECISIONS

In general 1

1. In general

A trial judge does not have discretion to deny attorney’s fees to a prevailing tenant under Section 27‑42‑410(b). The statute entitles the prevailing tenant to attorney’s fees as a matter of right, but it also gives the trial judge broad discretion to determine the amount of the fees, depending on the facts and equities of each case. The word “may” in the statute does not refer to the judge, but to the tenant; it gives the tenant the right to elect to seek recovery under the statute rather than the common law. To the extent that the word “may” connotes discretion, it is a discretion vested in the tenant to elect his or her remedies, not in the court to deny a remedy clearly provided by the statute. Prevatte v. Asbury Arms (S.C.App. 1990) 302 S.C. 413, 396 S.E.2d 642.

In setting a “reasonable” award of attorney’s fees to a prevailing tenant, it was appropriate to consider the following factors: (1) the tenant defaulted on his last month’s rent, giving the landlord a lawful basis for withholding at least part of the tenant’s security deposit; (2) the landlord’s claim for additional items was made in good faith and in strict compliance with the procedures mandated by the statute when a landlord retains a deposit; (3) the case was contested in good faith by the parties; (4) proof was simple because virtually all of the material facts were undisputed, so that trial preparation by the attorneys did not require unusual skill, effort, or investment of time; (5) the landlord prevailed at trial on 2 out of the 3 disputed items; and (6) the result obtained by the tenant’s attorney was quite modest. Prevatte v. Asbury Arms (S.C.App. 1990) 302 S.C. 413, 396 S.E.2d 642.

**SECTION 27‑40‑420.** Disclosure.

 (a) A landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of an owner of the premises or a person authorized to act on behalf of the owner as agent, inter alia, for purposes of service of process and receiving or receipting notices or demands.

 (b) The information required to be furnished by this section must be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

 (c) A person authorized to enter in a rental agreement on behalf of a landlord who fails to comply with subsection (a) with regard to a rental agreement entered into on behalf of the landlord becomes an agent of the landlord for purposes of that rental agreement for:

 (1) service of process and receiving and receipting for notices and demands;

 (2) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the performance of the obligations all rent collected from the premises and retained by the person on behalf of the landlord.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Provision that, for purposes of this chapter, “landlord” means, inter alia, a manager of premises who fails to disclose as required by this section, see Section 27‑40‑210.

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

Library References

Landlord and Tenant 24(2).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 330, 353, 355.

RESEARCH REFERENCES

Encyclopedias

49 Am. Jur. Proof of Facts 3d 277, Proof of Adultery as Grounds for Dissolution of Marriage.

54 Am. Jur. Proof of Facts 3d 135, Proof of Alienation of Affections.

Forms

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

**SECTION 27‑40‑430.** Landlord to deliver possession of dwelling unit.

 At the commencement of the term a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 27‑40‑440. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 27‑40‑760(c).

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Tenant’s remedies in the event that a landlord fails to deliver possession of a dwelling unit as required by this section, see Section 27‑40‑620.

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

Library References

Landlord and Tenant 128(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 694 to 698.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 32, Delivery of Possession.

S.C. Jur. Landlord and Tenant Section 59, Delivery of Possession.

LAW REVIEW AND JOURNAL COMMENTARIES

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

**SECTION 27‑40‑440.** Landlord to maintain premises.

 (a) A landlord shall:

 (1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

 (2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

 (3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;

 (4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

 (5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

 (b) If the duty imposed by paragraph (1) of subsection (a) is greater than any duty imposed by any other paragraph of that subsection, the landlord’s duty must be determined by reference to paragraph (1) of subsection (a).

 (c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord’s duties specified in paragraph (5) of subsection (a) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

 (d) The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

 (1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;

 (2) the work is not necessary to cure noncompliance with subsection (a)(1) of this section;

 (3) the agreement does not diminish or affect the obligations of the landlord to other tenants in the premises.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Provision that a landlord shall deliver possession of the premises to a tenant in compliance with this section at the commencement of the term, see Section 27‑40‑430.

Provision that a rental agreement may not permit receipt of rent absent an obligation to maintain the property, see Section 27‑40‑340.

Provisions relative to a tenant’s waiver of a landlord’s violation of duties set forth in this section, see Section 27‑40‑640.

Tenant’s remedies in the event that a landlord negligently or wilfully fails to provide essential services as required by this section, see Section 27‑40‑630.

Termination of a rental agreement, recovery of damages, or injunctive relief for noncompliance by a landlord with this section, see Section 27‑40‑610.

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

Library References

Landlord and Tenant 150.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 819 to 821, 834 to 835.

RESEARCH REFERENCES

ALR Library

43 ALR 5th 207 , Landlord’s Liability for Failure to Protect Tenant from Criminal Acts of Third Person.

Encyclopedias

43 Am. Jur. Proof of Facts 3d 329, Landlord’s Liability for Breach of Implied Warranty of Habitability.

S.C. Jur. Landlord and Tenant Section 34, Leases Governed by the Rlta.

S.C. Jur. Landlord and Tenant Section 48, Requirements of the Rlta.

Forms

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

South Carolina Legal and Business Forms Section 14:25 , Residential Rental Agreement‑Unfurnished.

Treatises and Practice Aids

Williston on Contracts Section 48:11, Implied Conditions and Covenants in Leases‑Habitability.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Tort law. 46 S.C. L. Rev. 191 (Autumn 1994).

Annual survey of South Carolina law, torts law. 42 S.C. L. Rev. 241 (Autumn 1990).

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

Tenant protection expanded. 39 S.C. L. Rev. 138, Autumn, 1987.

NOTES OF DECISIONS

In general 1

Comparative negligence 5

Criminal activity 4

Injuries caused by tenant’s dog 3

Landlord/tenant responsibilities 2

1. In general

In negligence actions under the Residential Landlord Tenant Act (RLTA), plaintiff must establish (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. Nedrow v. Pruitt (S.C.App. 1999) 336 S.C. 668, 521 S.E.2d 755, rehearing denied; Pryor v. Northwest Apartments, Ltd. (S.C.App. 1996) 321 S.C. 524, 469 S.E.2d 630.

Landlord’s failure to provide smoke detectors in rental home was not actionable under Residential Landlord and Tenant Act that required landlord to comply with applicable housing codes materially affecting health and safety, or statute that required all one‑family dwellings to be equipped with smoke detectors; Landlord‑Tenant Act did not specifically require landlords to provide smoke detectors in their rental properties, statute that required smoke detectors stated that it did not create cause of action for negligence‑based liability for death, injury, or damages, and tenant did not notify landlord of lack of smoke detectors. Robinson v. Code (S.C.App. 2009) 384 S.C. 582, 682 S.E.2d 495. Health 393; Landlord And Tenant 1228(1); Landlord And Tenant 1320

Negligence actions may be brought under the Residential Landlord Tenant Act (RLTA). Nedrow v. Pruitt (S.C.App. 1999) 336 S.C. 668, 521 S.E.2d 755, rehearing denied. Landlord And Tenant 1350

The Residential Landlord and Tenant Act, Sections 27‑40‑10 et seq., controlled an action by a tenant against a landlord where the tenant slipped and fell in the common grounds. Pryor v. Northwest Apartments, Ltd. (S.C.App. 1996) 321 S.C. 524, 469 S.E.2d 630.

Although the Residential Landlord and Tenant Act, Sections 27‑40‑10 et seq., creates a new cause of action not found at common law, the court must look to the common law for guidance in analyzing new causes of action. Pryor v. Northwest Apartments, Ltd. (S.C.App. 1996) 321 S.C. 524, 469 S.E.2d 630. Landlord And Tenant 1228(1)

The Residential Landlord and Tenant Act by express words creates a cause of action in tort in favor of a tenant of residential property against his or her landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition. It was the intent of the legislature to abrogate the existing law providing for landlord immunity from tort liability for injuries sustained on rented residential premises and to provide for landlord liability. The provisions of Sections 27‑40‑20, 27‑40‑50 and 27‑40‑610 in plain words reflect the intent of the legislature to create a cause of action in favor of the tenant and against the landlord for failure, after notice, to keep in good repair. Watson v. Sellers (S.C.App. 1989) 299 S.C. 426, 385 S.E.2d 369.

2. Landlord/tenant responsibilities

Affirmative act of employing courtesy officers, who were residents affiliated with law enforcement and served as courtesy officers in exchange for a reduced rental rate, to patrol apartment complex premises did not impose a duty on landlords or managers of complex to exercise reasonable care in providing security at complex; creation of program required only that landlords and managers maintain program itself with reasonable care. Wright v. PRG Real Estate Management, Inc. (S.C.App. 2015) 413 S.C. 276, 775 S.E.2d 399, rehearing denied. Landlord and Tenant 1322

Affirmative act of providing lighting for common areas and trimming shrubbery throughout common areas, purportedly for security purposes, did not impose a duty on landlords or managers of complex to exercise reasonable care in providing security at complex; installation of lighting and maintenance of shrubbery served multiple purposes in addition to increasing security, such as preventing accidental injury and improving aesthetics. Wright v. PRG Real Estate Management, Inc. (S.C.App. 2015) 413 S.C. 276, 775 S.E.2d 399, rehearing denied. Landlord and Tenant 1231

Apartment property manager’s statements to tenant that indicated apartment complex was a safe and secure place did not constitute unfair or deceptive acts so as to render landlords and managers liable under Unfair Trade Practices Act for injuries sustained by tenant who was abducted from complex parking lot and forced to withdraw money from her bank account. Wright v. PRG Real Estate Management, Inc. (S.C.App. 2015) 413 S.C. 276, 775 S.E.2d 399, rehearing denied. Antitrust and Trade Regulation 161

Under Residential Landlord Tenant Act (RLTA), landlord’s non‑delegable duty not to create unsafe conditions on demised premises extended to repair of gas heater, and thus, tenant was entitled to jury instruction to that effect in negligence action arising from such repairs, despite landlord’s claims that he did not attempt to repair heater and that he did not hire anyone to repair it; there was evidence that landlord instructed tenant to hire independent contractor to repair heater. Nedrow v. Pruitt (S.C.App. 1999) 336 S.C. 668, 521 S.E.2d 755, rehearing denied. Landlord And Tenant 1363(2)

Landlord’s duty to keep premises in “fit and habitable” condition applies to the inherent physical qualities of the premises, whereas the tenant, who has duty to keep dwelling “reasonably safe,” is responsible for other safety concerns on the premises. Fair v. U.S. (S.C. 1999) 334 S.C. 321, 513 S.E.2d 616. Landlord And Tenant 1051; Landlord And Tenant 1241; Landlord And Tenant 1280

A landlord did not breach its statutory duty of keeping its premises in a reasonably safe condition where a tenant slipped and fell while walking over a muddy surface in a common area, even though the tenant could have chosen other routes over which to walk; the landlord had no duty to warn of open and obvious natural conditions. Pryor v. Northwest Apartments, Ltd. (S.C.App. 1996) 321 S.C. 524, 469 S.E.2d 630.

A landlord owes his tenants a non‑delegable duty not to create unsafe conditions on premises and is thus vicariously liable for torts of his independent contractor. Durkin v. Hansen (S.C.App. 1993) 313 S.C. 343, 437 S.E.2d 550. Labor And Employment 3135

Landlord had to have notice of defect before being liable to tenant under South Carolina Residential Landlord and Tenant Act (SCRLTA) for failure to make necessary repairs to railing which collapsed when tenant leaned on it. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Landlord And Tenant 1292; Landlord And Tenant 1298

Fellow tenant’s speculation that his roommate might have contacted landlord about unsafe railing was insufficient to create genuine issue of material fact as to notice that would preclude summary judgment on claim of violation of South Carolina Residential Landlord and Tenant Act (SCRLTA) arising out of collapse of railing when plaintiff tenant leaned on it. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Federal Civil Procedure 2505

Sublessor who had performed maintenance for landlord was not landlord’s apparent agent and thus any notice he had of defective railing, which collapsed when tenant leaned on it, was not notice to landlord under South Carolina Residential Landlord and Tenant Act (SCRLTA), since any work sublessor performed at behest of landlord was narrowly confined to specific task. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Landlord And Tenant 1292; Landlord And Tenant 1298; Principal And Agent 1

3. Injuries caused by tenant’s dog

Residential landlord could be liable in negligence under Residential Landlord Tenant Act for injuries sustained by tenant’s invitee from attack by tenant’s dog that was kept chained in common area of leased premises over which landlord had control, consistent with its duty under Act to keep common area safe, if landlord had actual knowledge of dog’s vicious propensity and failed to remedy situation. Clea v. Odom (S.C. 2011) 394 S.C. 175, 714 S.E.2d 542. Animals 66.5(8)

Apartment lease, which provided that pets were required to meet approval of landlord, that dogs would not be allowed in multifamily units, and that tenant would be responsible for any damage caused by pet and must be in full control of pet at all times, did not contractually obligate landlord to prevent tenant’s dog from injuring third parties. Gilbert v. Miller (S.C.App. 2003) 356 S.C. 25, 586 S.E.2d 861, rehearing denied. Animals 66.5(8)

South Carolina law does not recognize holding a landlord vicariously liable for actions of a tenant’s dog. Gilbert v. Miller (S.C.App. 2003) 356 S.C. 25, 586 S.E.2d 861, rehearing denied. Animals 66.5(8)

Landlord was not liable for injuries caused by dog kept by tenant on leased property; Residential Landlord and Tenant Act (RLTA) did not alter common law rule that landlord is not liable to tenant’s invitee for injury caused by tenant’s dog. Bruce v. Durney (S.C.App. 2000) 341 S.C. 563, 534 S.E.2d 720, rehearing denied. Animals 66.5(8)

“Fit and habitable” provision of the Residential Landlord and Tenant Act (RLTA) does not alter the common law rule that a landlord is not liable to a tenant’s invitee for injury caused by a tenant’s dog. Fair v. U.S. (S.C. 1999) 334 S.C. 321, 513 S.E.2d 616. Animals 66.5(8)

4. Criminal activity

Word “safe” does not appear in this provision; rather, Act uses terms “fit” and “habitable” and it would be great stretch to construe those terms to include protection against criminal activity; accordingly Act does not impose duty on a landlord to provide protection to tenants against criminal activity by third parties. Cooke v. Allstate Management Corp., 1990, 741 F.Supp. 1205.

5. Comparative negligence

Even though landlord did not seek affirmative relief from tenant in tenant’s action against landlord under Residential Landlord Tenant Act (RLTA) for personal injuries suffered due to improperly repaired gas heater, jury was properly instructed on tenant’s statutory duty to use heating appliances in reasonable manner; landlord did claim comparative negligence on tenant’s part, RLTA was source of duty that jury could use to determine whether tenant was comparatively negligent, and only after finding that tenant breached some duty could jury have determined parties’ comparative negligence. Nedrow v. Pruitt (S.C.App. 1999) 336 S.C. 668, 521 S.E.2d 755, rehearing denied. Landlord And Tenant 1363(2)

**SECTION 27‑40‑450.** Limitation of liability.

 (a) Unless otherwise agreed, a landlord who conveys the premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. However, he remains liable to the tenant for security recoverable by the tenant under Section 27‑40‑410, unless the security deposit is transferred from the seller to the purchaser and the tenant is notified in writing a reasonable time after the transaction in which case the purchaser is liable under Section 27‑40‑410.

 (b) Unless otherwise agreed, a manager of the premises that includes a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Provision that, subject to this section, the holder of a landlord’s interest in premises at the time of termination of a tenancy is bound by statutory provisions relative to security deposits and prepaid rent, see Section 27‑40‑410.

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

Library References

Contracts 114.

Landlord and Tenant 95.

Westlaw Topic Nos. 233, 95.

C.J.S. Contracts Section 271.

C.J.S. Landlord and Tenant Sections 140, 149 to 154.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, torts law. 42 S.C. L. Rev. 241 (Autumn 1990).

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

ARTICLE 5

Tenant Obligations

**SECTION 27‑40‑510.** Tenant to maintain dwelling unit.

 A tenant shall:

 (1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

 (2) keep the dwelling unit and that part of the premises that he uses reasonably safe and reasonably clean;

 (3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a reasonably clean and safe manner;

 (4) keep all plumbing fixtures in the dwelling unit or used by the tenant reasonably clean;

 (5) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air‑conditioning, and other facilities and appliances including elevators in the premises;

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

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

 (8) comply with the lease and rules and regulations which are enforceable pursuant to Section 27‑40‑520.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Application of a security deposit to damages suffered by a landlord as a result of a tenant’s noncompliance with this section, see Section 27‑40‑410.

Landlord’s remedies for a tenant’s failure to fulfill the obligations imposed by this section, see Sections 27‑40‑710 and 27‑40‑720.

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

Library References

Landlord and Tenant 134, 150, 152.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 746 to 756, 758 to 762, 819 to 821, 823 to 837, 958 to 959, 963 to 965, 967.

C.J.S. Mines and Minerals Section 157.

RESEARCH REFERENCES

Encyclopedias

43 Am. Jur. Proof of Facts 3d 329, Landlord’s Liability for Breach of Implied Warranty of Habitability.

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

S.C. Jur. Landlord and Tenant Section 34, Leases Governed by the Rlta.

S.C. Jur. Landlord and Tenant Section 48, Requirements of the Rlta.

Forms

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

NOTES OF DECISIONS

In general 1

1. In general

Tenant who sued landlord under Residential Landlord Tenant Act (RLTA) for personal injuries suffered due to improperly repaired gas heater preserved for appellate review her claim that jury should not have been instructed on tenant’s duty to use heating appliances in reasonable manner, even though tenant did not object after trial court charged jury; during jury’s deliberation, they requested to be recharged on tenant’s duty, and tenant objected after jury was recharged. Nedrow v. Pruitt (S.C.App. 1999) 336 S.C. 668, 521 S.E.2d 755, rehearing denied. Landlord And Tenant 1363(2)

Even though landlord did not seek affirmative relief from tenant in tenant’s action against landlord under Residential Landlord Tenant Act (RLTA) for personal injuries suffered due to improperly repaired gas heater, jury was properly instructed on tenant’s statutory duty to use heating appliances in reasonable manner; landlord did claim comparative negligence on tenant’s part, RLTA was source of duty that jury could use to determine whether tenant was comparatively negligent, and only after finding that tenant breached some duty could jury have determined parties’ comparative negligence. Nedrow v. Pruitt (S.C.App. 1999) 336 S.C. 668, 521 S.E.2d 755, rehearing denied. Landlord And Tenant 1363(2)

Landlord’s duty to keep premises in “fit and habitable” condition applies to the inherent physical qualities of the premises, whereas the tenant, who has duty to keep dwelling “reasonably safe,” is responsible for other safety concerns on the premises. Fair v. U.S. (S.C. 1999) 334 S.C. 321, 513 S.E.2d 616. Landlord And Tenant 1051; Landlord And Tenant 1241; Landlord And Tenant 1280

**SECTION 27‑40‑520.** Rules and regulations.

 (a) A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant’s use and occupancy of the premises. They are enforceable against the tenant only if:

 (1) their purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord’s property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

 (2) they are reasonably related to the purpose for which they are adopted;

 (3) they apply to all tenants in the premises in a fair manner;

 (4) they are sufficiently explicit in their prohibition, direction, or limitation of the tenant’s conduct to fairly inform him of what he must or must not do to comply;

 (5) they are not for the purpose of evading the obligations of the landlord;

 (6) the tenant has notice of them at the time he enters into the rental agreement, or when they are adopted.

 (b) Rules or regulations adopted after a tenant enters into a rental agreement are not valid as to such tenant if the rules or regulations substantially modify the tenant’s bargain and after receiving notice upon adoption of his right to object, the tenant objects in writing to the landlord within thirty days after promulgation.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Provision that, for purposes of this chapter, the term “rental agreement” includes rules and regulations embodying terms and conditions concerning use and occupancy of a dwelling unit and premises, see Section 27‑40‑210.

Tenant’s duty to comply with rules and regulations which are enforceable under this section, see Section 27‑40‑510.

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

Library References

Landlord and Tenant 134.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 746 to 756, 758 to 762, 958 to 959, 963 to 965, 967.

C.J.S. Mines and Minerals Section 157.

**SECTION 27‑40‑530.** Access.

 (a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

 (b) A landlord or his agent may enter the dwelling unit without consent of the tenant:

 (1) At any time in case of emergency—prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency;

 (2) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air‑conditioning filters, providing termite, insect, or pest treatment, and the like, provided that the right to enter to provide regularly scheduled periodic services is conspicuously set forth in writing in the rental agreement and that prior to entering, the landlord announces his intent to enter to perform services; or

 (3) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the landlord announces his intent to enter to perform services.

 (c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in cases under item (b) above, the landlord shall give the tenant at least twenty‑four hours notice of his intent to enter and may enter only at reasonable times.

 (d) A landlord has no other right of access except:

 (1) pursuant to court order;

 (2) as permitted by Sections 27‑40‑720 and 27‑40‑730;

 (3) when accompanied by a law enforcement officer at reasonable times for the purpose of service of process in ejectment proceedings; or

 (4) unless the tenant has abandoned or surrendered the premises.

 (e) A tenant shall not change locks on the dwelling unit without the permission of the landlord.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 4.

Cross References

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

Library References

Landlord and Tenant 150(3).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 819 to 821, 835.

**SECTION 27‑40‑540.** Tenant to use and occupy.

 Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit and shall not conduct or permit any illegal activities thereon.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Landlord authorized to give notice of breach of rental agreement, with termination of agreement to follow if breach not remedied, based on tenant’s noncompliance with this section, see Section 27‑40‑710.

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

Library References

Landlord and Tenant 134(3).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Section 746.

C.J.S. Mines and Minerals Section 157.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 48, Requirements of the Rlta.

ARTICLE 7

Remedies

Subarticle I

Tenant Remedies

**SECTION 27‑40‑610.** Noncompliance by landlord in general.

 (a) Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with Section 27‑40‑440 materially affecting health and safety or the physical condition of the property, the tenant may deliver a written notice to the landlord 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 within fourteen days. The rental agreement shall terminate as provided in the notice except that:

 (1) The rental agreement shall not terminate by reason of the breach:

 (i) if the breach is remedial by repairs or otherwise and the landlord adequately remedies the breach before the date specified in the notice; or

 (ii) if such remedy for a breach not affecting health and safety cannot be remedied within fourteen days, but is commenced within the fourteen‑day period and is pursued in good faith to completion within a reasonable time.

 (2) The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant’s permission or who is allowed access to the premises by the tenant.

 (b) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief in a magistrate’s or circuit court, without posting bond, for any noncompliance by the landlord with the rental agreement or Section 27‑40‑440. If the landlord’s noncompliance is wilful, the tenant may recover reasonable attorney’s fees.

 (c) If the rental agreement is terminated, the landlord shall return security recoverable by the tenant under Section 27‑40‑410. If the landlord’s noncompliance is wilful, the tenant may recover reasonable attorney’s fees.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Exclusivity of a tenant’s statutory remedies in the event that a landlord fails to provide essential services, see Section 27‑40‑630.

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

Library References

Landlord and Tenant 131.1, 154(1), 159(0.5).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Section 838.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 53, Tenant’s Rights.

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

Forms

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

South Carolina Legal and Business Forms Section 14:25 , Residential Rental Agreement‑Unfurnished.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, torts law. 42 S.C. L. Rev. 241 (Autumn 1990).

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

NOTES OF DECISIONS

In general 1

1. In general

The Residential Landlord and Tenant Act by express words creates a cause of action in tort in favor of a tenant of residential property against his or her landlord for failure, after notice, to make necessary repairs and to do what is reasonably necessary to keep the premises in a habitable condition. It was the intent of the legislature to abrogate the existing law providing for landlord immunity from tort liability for injuries sustained on rented residential premises and to provide for landlord liability. The provisions of Sections 27‑40‑20, 27‑40‑50 and 27‑40‑610 in plain words reflect the intent of the legislature to create a cause of action in favor of the tenant and against the landlord for failure, after notice, to keep in good repair. Watson v. Sellers (S.C.App. 1989) 299 S.C. 426, 385 S.E.2d 369.

Landlord had to have notice of defect before being liable to tenant under South Carolina Residential Landlord and Tenant Act (SCRLTA) for failure to make necessary repairs to railing which collapsed when tenant leaned on it. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Landlord And Tenant 1292; Landlord And Tenant 1298

Fellow tenant’s speculation that his roommate might have contacted landlord about unsafe railing was insufficient to create genuine issue of material fact as to notice that would preclude summary judgment on claim of violation of South Carolina Residential Landlord and Tenant Act (SCRLTA) arising out of collapse of railing when plaintiff tenant leaned on it. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Federal Civil Procedure 2505

Sublessor who had performed maintenance for landlord was not landlord’s apparent agent and thus any notice he had of defective railing, which collapsed when tenant leaned on it, was not notice to landlord under South Carolina Residential Landlord and Tenant Act (SCRLTA), since any work sublessor performed at behest of landlord was narrowly confined to specific task. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Landlord And Tenant 1292; Landlord And Tenant 1298; Principal And Agent 1

**SECTION 27‑40‑620.** Failure to deliver possession.

 (a) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in Section 27‑40‑430, rent abates until possession is delivered and the tenant may:

 (1) terminate the rental agreement upon at least five days’ written notice to the landlord and upon termination the landlord shall return all prepaid rent and security; or

 (2) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the actual damages sustained by him. Where the landlord is unable to deliver possession due to a previous tenant remaining in possession without the landlord’s consent, after the expiration of the term of their rental agreement or its termination, the landlord is not liable for damages pursuant to this subsection, if the landlord made reasonable efforts to obtain possession of the premises.

 (b) If a person’s failure to deliver possession is wilful and not in good faith, an aggrieved person may recover from that person an amount not more than three months’ periodic rent or twice the actual damages sustained, whichever is greater, and reasonable attorney’s fees.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 128, 129.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 694 to 698, 700 to 711.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, torts law. 42 S.C. L. Rev. 241 (Autumn 1990).

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

**SECTION 27‑40‑630.** Wrongful failure to provide essential services.

 (a) If the landlord is negligent or wilful in failing to provide essential services as required by the rental agreement or Section 27‑40‑440, the tenant may give written notice to the landlord specifying the breach and may:

 (1) procure reasonable amounts of the required essential services during the period of the landlord’s noncompliance and deduct their actual and reasonable cost from the rent; or

 (2) recover damages based upon the diminution in the fair‑market rental value of the dwelling unit and reasonable attorney’s fees.

 (b) If the tenant proceeds under this section, he may not proceed under Section 27‑40‑610 as to that breach.

 (c) Under no circumstances should this section be interpreted to authorize the tenant to make repairs on the rental property and deduct the cost of the repairs from rent. In the event that the tenant unlawfully acts without the landlord’s consent and authorizes repairs, any mechanic’s lien arising therefrom shall be unenforceable.

 (d) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord fails to act within a reasonable time or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the tenant’s permission or who is allowed access to the premises by the tenant.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 150(5), 152(10).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 819 to 821, 823, 834.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

Forms

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

South Carolina Legal and Business Forms Section 14:25 , Residential Rental Agreement‑Unfurnished.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, torts law. 42 S.C. L. Rev. 241. (Autumn 1990).

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

Notes of Decisions

In general 1

1. In general

Landlord had to have notice of defect before being liable to tenant under South Carolina Residential Landlord and Tenant Act (SCRLTA) for failure to make necessary repairs to railing which collapsed when tenant leaned on it. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Landlord And Tenant 1292; Landlord And Tenant 1298

Fellow tenant’s speculation that his roommate might have contacted landlord about unsafe railing was insufficient to create genuine issue of material fact as to notice that would preclude summary judgment on claim of violation of South Carolina Residential Landlord and Tenant Act (SCRLTA) arising out of collapse of railing when plaintiff tenant leaned on it. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Federal Civil Procedure 2505

Sublessor who had performed maintenance for landlord was not landlord’s apparent agent and thus any notice he had of defective railing, which collapsed when tenant leaned on it, was not notice to landlord under South Carolina Residential Landlord and Tenant Act (SCRLTA), since any work sublessor performed at behest of landlord was narrowly confined to specific task. Thompson v. CDL Partners LLC (C.A.4 (S.C.) 2010) 378 Fed.Appx. 288, 2010 WL 1936379, Unreported. Landlord And Tenant 1292; Landlord And Tenant 1298; Principal And Agent 1

**SECTION 27‑40‑640.** Landlord’s noncompliance as defense to action for possession or rent.

 (a) In an action for possession based upon nonpayment of the rent or in an action for rent concerning a period when the tenant is in possession, the tenant may rely on the rental agreement or the provisions of this chapter to assert defenses and to counterclaim for any amount recoverable thereunder. If the defense or counterclaim by the tenant is without merit and is not raised in good faith, the landlord may recover, in addition to actual damages, reasonable attorney’s fees.

 (b) Notwithstanding the provisions of subsection (a), a tenant is considered to have waived violation of a landlord’s duty to maintain the premises as set forth by the rental agreement or violation of the landlord’s duties under Section 27‑40‑440 as a defense in an action for possession based upon nonpayment of rent or in an action for rent concerning a period where:

 (1) the landlord has no notice of the violation of the duties fourteen days before rent is due for violations of Section 27‑40‑440 involving services other than essential services; or

 (2) the landlord has no notice before rent is due which provides a reasonable opportunity to make emergency repairs necessary for the provision of essential services.

 (c) In an action for rent concerning a period when the tenant is not in possession, he may assert defenses and counterclaims as provided in subsection (a) but is not required to pay any rent as required by Section 27‑40‑790.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 106.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 170, 177, 183.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 52, Landlord’s Rights.

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, torts law. 42 S.C. L. Rev. 241. (Autumn 1990).

Hubbard and Felix, Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

**SECTION 27‑40‑650.** Fire or casualty damage.

 (a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to the extent that normal use and occupancy of the dwelling unit is substantially impaired, the tenant may:

 (1) immediately vacate the premises and notify the landlord in writing within seven days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

 (2) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant’s liability for rent is reduced in proportion to the diminution in the fair‑market rental value of the dwelling unit.

 (b) Unless the fire or casualty was due to the tenant’s negligence or otherwise caused by the tenant, if the rental agreement is terminated, the landlord shall return security recoverable under Section 27‑40‑410 and all prepaid rent. Accounting for rent in the event of termination or apportionment must be made as of the date of the fire or casualty. A landlord may withhold the tenant’s security deposit or prepaid rent if the fire or casualty was due to the tenant’s negligence or otherwise caused by the tenant; however, if the landlord withholds a security deposit or prepaid rent, he must comply with the notice requirement in Section 27‑40‑410(a).

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 5.

Cross References

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

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, torts law. 42 S.C. L. Rev. 241 (Autumn 1990).

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

**SECTION 27‑40‑660.** Tenant’s remedies for landlord’s unlawful ouster or exclusion.

 If a landlord unlawfully removes or excludes the tenant from the premises, or wilfully diminishes services to tenant by interrupting or causing interruption of essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount equal to three months’ periodic rent or twice the actual damages sustained by him, whichever is greater, and reasonable attorney’s fees. If the rental agreement is terminated the landlord shall return security recoverable under Section 27‑40‑410.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Tenant’s entitlement to the remedies provided in this section if a landlord violates certain prohibitions with respect to retaliatory conduct, see Section 27‑40‑910.

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

Library References

Landlord and Tenant 105, 132(3), 184.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 164, 169, 183, 728, 990 to 997.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 53, Tenant’s Rights.

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

LAW REVIEW AND JOURNAL COMMENTARIES

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

Subarticle II

Landlord Remedies

**SECTION 27‑40‑710.** Noncompliance with rental agreement; failure to pay rent; removal of evicted tenant’s personal property.

 (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.

 (B) 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.

 (C) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief, judgments, or evictions in magistrate’s or circuit court without posting bond for any noncompliance by the tenant with the rental agreement or Section 27‑40‑510. A real estate broker‑in‑charge licensed in this State or a licensed property manager, in the conduct of his licensed business may, either in person or through one or more regular employees, complete a form writ of eviction and present facts to judicial officers on behalf of his landlord/principal in support of an action for eviction and/or distress and/or abandonment for which no separate charge is made for this service. If the tenant’s noncompliance is wilful other than nonpayment of rent, the landlord may recover reasonable attorney’s fees, provided the landlord is represented by an attorney. If the tenant’s nonpayment of rent is not in good faith, the landlord is entitled to reasonable attorney’s fees, provided the landlord is represented by an attorney.

 (D) 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.

HISTORY: 1986 Act No. 336, Section 1; 1992 Act No. 484, Section 1; 1998 Act No. 382, Section 2; 1999 Act No. 59, Section 1.

CROSS REFERENCES

Provision that a landlord may bring an action for possession if there has been material noncompliance by the tenant under this section, notwithstanding certain prohibitions with respect to retaliatory conduct by a landlord, see Section 27‑40‑910.

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

Library References

Landlord and Tenant 108(1), 161(1), 312.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 173, 183, 715 to 717, 719.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 52, Landlord’s Rights.

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

S.C. Jur. Landlord and Tenant Section 27, Leases Governed by the Rlta.

United States Supreme Court Annotations

Landlord’s duty to relet on defaulting tenant’s account. 51 L Ed 224.

Attorney General’s Opinions

A landlord must only provide the written notice of nonpayment specified in Section 27‑40‑710(b) once during the period covered by a lease; where written notice is conspicuously stated in the written lease, such notice is not required. 1987 Op. Atty Gen, No. 87‑9, p 44.

NOTES OF DECISIONS

In general 1

1. In general

A letter that landlord mailed to tenant in July, which specified that any subsequent nonpayment of rent would result in eviction, gave proper notice of non‑compliance with the parties’ lease agreement as required by statute, such that landlord was legally justified in terminating tenant’s lease upon tenant’s subsequent nonpayment of rent in August. Bowers v. Thomas (S.C.App. 2007) 373 S.C. 240, 644 S.E.2d 751, rehearing denied. Landlord And Tenant 957

**SECTION 27‑40‑720.** Noncompliance affecting health and safety.

 (a) If there is noncompliance by the tenant with Section 27‑40‑510 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and the tenant shall reimburse the landlord for the cost and, in addition, the landlord shall have the remedies available under this chapter.

 (b) If there is noncompliance by the tenant with Section 27‑40‑510 materially affecting health and safety other than as set forth in subsection (a) above, and the tenant fails to comply as promptly as conditions require in case of emergency, or within fourteen days after written notice by the landlord if it is not an emergency, specifying the breach and requesting that the tenant remedy within that period of time, the landlord may terminate the rental agreement.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 6.

CROSS REFERENCES

Other provisions relative to a landlord’s right of access to a dwelling unit, see Section 27‑40‑530.

Provision that a landlord may bring an action for possession if there has been material noncompliance by the tenant under this section, notwithstanding certain prohibitions with respect to retaliatory conduct by a landlord, see Section 27‑40‑910.

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

Library References

Landlord and Tenant 105, 106, 150(3).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 164, 169 to 170, 177, 183, 819 to 821, 835.

RESEARCH REFERENCES

Encyclopedias

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

**SECTION 27‑40‑730.** Remedies for absence, nonuse, and abandonment.

 (a) The unexplained absence of a tenant from a dwelling unit for a period of fifteen days after default in the payment of rent must be construed as abandonment of the dwelling unit.

 (b) If the tenant has voluntarily terminated the utilities and there is an unexplained absence of a tenant after default in payment of rent, abandonment is considered immediate and the fifteen day rule as described in (a) does not apply.

 (c) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, it terminates as of the date of the new tenancy, subject to the landlord’s remedies under Section 27‑40‑740. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is considered to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is considered to be a month or a week, as the case may be.

 (d) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has removed a substantial portion of his property or voluntarily and permanently terminated his utilities and has left personal property in the dwelling unit or on the premises with a fair‑market value of five hundred dollars or less, the landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.

 (e) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has left personal property in the dwelling unit or on the premises in the cases not covered by subsection (d) above, the landlord may have the property removed only pursuant to the provisions of Sections 27‑37‑10 to 27‑37‑150.

 (f) Where property is disposed of by the landlord pursuant to subsection (d) and the property was in excess of five hundred dollars, the landlord is not liable unless the landlord was grossly negligent.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 7.

CROSS REFERENCES

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

Other provisions relative to a landlord’s right of access to a dwelling unit, see Section 27‑40‑530.

Library References

Landlord and Tenant 110(1), 161(1), 161(2).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 140, 196 to 197, 715 to 719.

RESEARCH REFERENCES

Encyclopedias

70 Am. Jur. Proof of Facts 3d 1, Proof of Tenant’s Abandonment of Real Property Lease.

72 Am. Jur. Proof of Facts 3d 155, Sufficiency of Landlord’s Efforts to Mitigate Damages Following Tenant’s Abandonment of Leased Premises.

86 Am. Jur. Trials 1, Landlord’s Recovery of Rent After Abandonment or Surrender of Leased Premises.

S.C. Jur. Landlord and Tenant Section 54, Distress Under the Rlta.

United States Supreme Court Annotations

Landlord’s duty to relet on defaulting tenant’s account. 51 L Ed 224.

**SECTION 27‑40‑740.** Landlord’s lien; distress proceeding.

 (a) A contractual lien or contractual security interest on behalf of the landlord in the tenant’s household goods is not enforceable unless perfected before the effective date of this chapter.

 (b) A landlord may enforce collection of rent by distress only pursuant to Chapter 39, Title 27; however, the tenant may raise defenses to the issuance of a distress warrant pursuant to the provisions of this chapter or the rental agreement and may take advantage of the property exemptions found in Section 15‑41‑30.

HISTORY: 1986 Act No. 336, Section 1.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference was changed from Section 15‑41‑200 to Section 15‑41‑30 because Act 415 of 1988 renumbered Section 15‑41‑200 to 15‑41‑30.

CROSS REFERENCES

Provision that if, before expiration of a rental agreement, a landlord rents a dwelling unit abandoned by a tenant, such agreement is terminated as of the date of the new tenancy, subject to the landlord’s remedies under this section, see Section 27‑40‑730.

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

Library References

Landlord and Tenant 239, 263.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1201, 1212, 1217, 1272, 1274, 1284 to 1285, 1300.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 46, Under the RLTA.

S.C. Jur. Landlord and Tenant Section 54, Distress Under the RLTA.

Forms

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

Attorney General’s Opinions

The recently‑enacted State Residential Landlord and Tenant Act is applicable only to leases or rental agreements entered into or extended or renewed on or after July 8, 1986, the effective date of the Act. In addition, the applicability of the exemptions provided by Section 15‑41‑200 to distress proceedings is a significant change by the General Assembly in the landlord‑tenant relationship. 1986 Op. Atty Gen, No. 86‑82, p 256.

**SECTION 27‑40‑750.** Remedy after termination.

 If the rental agreement is terminated, the landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney’s fees.

HISTORY: 1986 Act No. 336, Section 1.

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. Attorney Fees Section 52, Landlord’s Rights.

S.C. Jur. Landlord and Tenant Section 29, Leases Governed by the Rlta.

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

United States Supreme Court Annotations

Landlord’s duty to relet on defaulting tenant’s account. 51 L Ed 224.

**SECTION 27‑40‑760.** Recovery of possession limited.

 A landlord may not recover or take possession of the dwelling unit by action or otherwise, including wilful diminution of required essential services to the tenant by interrupting or causing the interruption of services, except in case of abandonment, surrender, termination, or as permitted in this chapter.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Provision that a landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in this section, see Section 27‑40‑430.

Provision that a landlord who recovers damages on account of a tenant’s bad faith assertion of retaliatory conduct may not also recover damages under this section, see Section 27‑40‑910.

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

Library References

Landlord and Tenant 275, 276.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1322 to 1323, 1325, 1329 to 1331, 1334.

**SECTION 27‑40‑770.** Periodic tenancy; holdover remedies.

 (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 wilful 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.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 116(0.5), 196, 200.9, 216.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 209 to 210, 220, 227 to 228, 988 to 989, 1024, 1052 to 1053.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 52, Landlord’s Rights.

S.C. Jur. Landlord and Tenant Section 29, Leases Governed by the Rlta.

Forms

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

South Carolina Legal and Business Forms Section 14:88 , Holdover‑Residential.

**SECTION 27‑40‑780.** Landlord and tenant remedies for abuse of access.

 (a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief in magistrates’ or circuit court without posting bond to compel access, or terminate the rental agreement. In either case the landlord may recover actual damages and reasonable attorney’s fees.

 (b) If the landlord knowingly makes an unlawful entry or repeated lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief in magistrates’ or circuit court without posting bond to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages and reasonable attorney’s fees.

HISTORY: 1986 Act No. 336, Section 1.

CROSS REFERENCES

Provision that, in an action for rent concerning a period when the tenant is not in possession, he is not required to pay any rent as required by this section, see Section 27‑40‑640.

Sufficiency, in order to stay execution of a judgment for ejectment, of a tenant’s undertaking that he will pay rent as it becomes due after entry of the judgment, see Section 27‑40‑800.

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

Library References

Landlord and Tenant 132(1), 150(3).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 692, 721 to 722, 819 to 821, 835.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 52, Landlord’s Rights.

S.C. Jur. Attorney Fees Section 53, Tenant’s Rights.

**SECTION 27‑40‑790.** Payment of rent into court.

 In any action where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the rental agreement:

 (a) 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. If the landlord and tenant disagree as to the amount of rent or the time of payments thereof, the court shall hold a hearing as soon as feasible after the issues have been joined, and preliminarily determine the matter. In the event that the basis for the disagreement of the amount of rent due is the landlord’s alleged violation of the rental agreement or the provisions of this chapter, the rent to be paid must be the fair‑market rental value of the premises at the time of the hearing. Rent must not be abated for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with his permission or who is allowed access to the premises by the tenant.

 (b) 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.

 In the event that the amount of rent is in controversy, the court shall determine the amount of rent to be paid to the landlord in the same manner as in subsection (a) or (b) of this section.

 (c) Should the tenant not appear and show cause within ten days, the court shall issue a warrant of ejectment pursuant to Section 27‑37‑40 of the 1976 Code.

 Should the tenant appear in response to the rule and allege that rent due under subsections (a) or (b) has been paid, the court shall determine the issue. If the tenant has failed to comply with subsections (a) or (b), 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.

 (d) 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 he has complied fully with the provisions of this section.

HISTORY: 1986 Act No. 336, Section 1; 1995 Act No. 112, Section 8.

Cross References

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

Library References

Deposits in Court 1.

Westlaw Topic No. 123.

C.J.S. Deposits in Court Sections 1 to 7.

Attorney General’s Opinions

Section 27‑40‑790 would be applied by the magistrate prior to Section 27‑40‑800 becoming applicable. S.C. Op.Atty.Gen. (January 13, 2016) 2016 WL 386065.

**SECTION 27‑40‑800.** Undertaking on appeal and order staying execution.

 (a) Upon appeal to the circuit court, the case must be heard, in a manner consistent with other appeals from magistrates’ court, as soon as is feasible after the appeal is docketed.

 (b) It is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the magistrate in accordance with Section 27‑40‑780, as it becomes due periodically after the judgment was entered. Any magistrate, clerk, or circuit court judge shall order a stay of execution upon the undertaking.

 (c) The undertaking by the tenant and the order staying execution may be substantially in the following form:

|  |  |
| --- | --- |
|  |  |
| State of South Carolina |   |
| County of \_\_\_\_\_\_\_\_\_\_ |   |
|   |   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Landlord |   |
|   |   |
| vs. |   |
|   |   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tenant |   |

 Bond to Stay

 Execution on Appeal

 to Circuit Court

 Now comes the tenant in the above entitled action and respectfully shows the court that a judgment of ejectment was issued against the tenant and for the landlord on the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 19\_, by the magistrate. Tenant has appealed the judgment to the circuit court.

 Pursuant to the findings of the magistrate, the tenant is obligated to pay rent in the amount of $\_\_\_\_\_ per \_\_\_\_\_, due on the \_\_\_ day of each \_\_\_\_\_\_\_\_\_\_.

 Tenant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the court and moves the circuit court to stay execution on the judgment for ejectment until this matter is heard on appeal and decided by the circuit court.

 This the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 19\_\_\_

 \_

 Tenant

 Upon execution of the above bond, execution on the judgment of ejectment is hereby stayed until the action is heard on appeal and decided by the circuit court. If tenant fails to make any rental payment within five days of the due date, upon application of the landlord, the stay of execution shall dissolve, the appeal by the tenant to the circuit court on issues dealing with possession must be dismissed and the sheriff may dispossess the tenant.

 This the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 19\_\_\_

 \_

 Judge

 (d) If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the circuit court. Upon the motion and upon notice to all interested parties, the court shall hold a hearing as soon as is feasible after the filing of the motion and determine what modifications, if any, are appropriate. No judgment for ejectment may be executed pending a hearing on the motion, provided the tenant complied with the terms of the undertaking.

 (e) If the tenant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the landlord, shall issue a warrant of ejectment to be executed pursuant to Section 27‑37‑40 of the 1976 Code.

 (f)(1) Upon appeal to the Supreme Court or to the court of appeals, it is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking.

 (2) The tenant’s failure to comply with the terms of the undertaking entitles the landlord to execution of the judgment for possession in accordance with the provisions of subsection (e) of this section.

HISTORY: 1986 Act No. 336, Section 1; 1999 Act No. 55, Section 34.

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 Section 54, Exceptions to the Automatic Stay.

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.

Forms

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

Attorney General’s Opinions

Section 27‑40‑790 would be applied by the magistrate prior to Section 27‑40‑800 becoming applicable. S.C. Op.Atty.Gen. (January 13, 2016) 2016 WL 386065.

ARTICLE 9

Retaliatory Conduct Prohibited; Miscellaneous

**SECTION 27‑40‑910.** Retaliatory conduct prohibited.

 (a) Except as provided in this section, a landlord shall not retaliate by increasing rent to an amount in excess of fair‑market value or decreasing essential services or by bringing an action for possession after:

 (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or

 (2) the tenant has complained to the landlord of a violation of this chapter.

 (b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in Section 27‑40‑660 as a defense in any retaliatory action against him for possession. If the defense by the tenant is without merit, the landlord is entitled to reasonable attorney’s fees. If the defense is raised in bad faith, the landlord may recover up to three month’s periodic rent or treble the actual damages, whichever is greater. If the landlord recovers damages under this section, he may not also recover damages under Section 27‑40‑760.

 (c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:

 (1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his permission or who is allowed access to the premises by the tenant, or

 (2) there is material noncompliance by the tenant under Section 27‑40‑710 or Section 27‑40‑720; or

 (3) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

 (d) The maintenance of an action under subsection (c) does not release the landlord from liability under subsection (b) of Section 27‑40‑610.

 (e) Notwithstanding the provisions of subsection (a) a landlord who rents more than four adjoining dwelling units on the premises may increase rent without there being a presumption of retaliation, provided that the increase applies uniformly to all tenants, or so long as the rent does not exceed the fair‑market value.

 (f) In an action for possession where the tenant intends to raise a defense under this section, the tenant must notify the landlord in writing within ten days after service of the Rule to Vacate or Show Cause of his intent to do so. After the tenant has filed an Answer to the Rule, the court shall hear the matter as promptly as is feasible.

 (g) If the landlord retaliates against the tenant for engaging in conduct protected under section (a) by refusing to renew the lease, and if the tenant is not in default as to payment of rent, the landlord may not recover possession of the dwelling unit for seventy‑five days and may not increase rent to an amount in excess of fair‑market value or decrease essential services pending the recovery of the dwelling unit, provided that the tenant proves the landlord’s violation of this chapter, the landlord had notice of such violation, and the landlord had notice of the tenant’s complaint prior to expiration of the lease.

 (h) Any landlord who acts in retaliation against the tenant for engaging in protected conduct is liable for damages up to three month’s rent or treble the actual damages sustained by the tenant, whichever is greater, and reasonable attorney’s fees. Nothing in this section may be construed to prohibit an action for damages after a landlord has recovered possession of the dwelling unit in subsection (c), provided the ejectment was primarily in retaliation against the tenant’s protected conduct.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

RESEARCH REFERENCES

Encyclopedias

45 Am. Jur. Proof of Facts 3d 375, Tenant’s Rights and Remedies Against Retaliatory Eviction by Landlord.

99 Am. Jur. Trials 289, Retaliatory Eviction Claims.

S.C. Jur. Attorney Fees Section 52, Landlord’s Rights.

S.C. Jur. Landlord and Tenant Section 64, Leases Governed by the Rlta.

LAW REVIEW AND JOURNAL COMMENTARIES

Liabilities of sellers and lessors of residential realty in South Carolina. 40 S.C. L. Rev. 545 (Spring 1989).

**SECTION 27‑40‑920.** Conflict with Title 27.

 Chapter 35, Title 27, Chapter 37, Title 27, and Article 3, Chapter 39, Title 27, of the 1976 Code are not applicable to the leasing or renting or to leases or rental agreements concerning any real property insofar as they are inconsistent with the provisions of this chapter, including the rights and remedies of landlords and tenants thereto.

HISTORY: 1986 Act No. 336, Section 1.

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 40, Right to Assign or Sublet.

**SECTION 27‑40‑930.** Severability.

 If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

**SECTION 27‑40‑940.** Prior transactions.

 Transactions entered into before the effective date of this chapter, and not extended or renewed on or after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the repeal or amendment had not occurred.

HISTORY: 1986 Act No. 336, Section 1.

Cross References

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

Library References

Landlord and Tenant 3.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 7, 342.

RESEARCH REFERENCES

Forms

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