

The State of South Carolina

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Office of the Attorney General

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August 8, 1990

The Honorable Paul W. Derrick
Member, House of Representatives
214 Outlet Point Boulevard
Columbia, South Carolina 29210

Dear Representative Derrick:

In a letter to this Office you referenced a letter from Mrs. Wanda Davis dealing with the accrual of rent once an eviction notice has been served on a tenant. Specific reference was made to Section 27-37-150 of the Code which states:

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

Mrs. Davis has questioned whether acceptance of rental funds already due and owing after the service of an eviction notice voids the eviction and authorizes the tenant to remain on the rental premises.

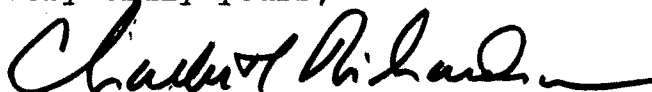
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In addition to Section 27-37-150, I refer you to Section 27-40-790 of the Code, a copy of which I am attaching. As stated, a tenant "... is required to pay the landlord all rent which becomes due after the issuance of a written rule requiring the tenant to vacate or show cause as rent becomes due" Also, it is stated "... (t)he tenant is required to pay the landlord all rent allegedly owed prior to the issuance of the rule"

Based upon the referenced provisions, acceptance of rent which was due and owing prior to the commencement of an eviction action does not void the eviction action. Therefore, such acceptance does not on its own authorize the tenant to remain in the leased premises.

With best wishes, I am

Very truly yours,

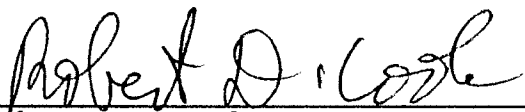


Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosure

REVIEWED AND APPROVED BY:



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