

The State of South Carolina

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August 8, 1990

The Honorable Jarvis R. Klapman  
Member, House of Representatives  
125 Hendrix Street  
West Columbia, South Carolina 29169

Dear Representative Klapman:

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

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.

Mrs. Davis also questioned the time period for removing tenants from leased premises after the magistrate rules that ejectment is in order. Section 27-37-40 of the Code states:

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

If the matter proceeds to trial, Section 27-37-100 of the Code provides that if the landlord prevails in the action,

... (t)he magistrate shall within five days issue a writ of ejectment and the tenant shall be ejected by the constable or special constable or the sheriff of the county.

Section 27-37-160 of the Code states further:

In executing a writ of ejectment, the constable or deputy sheriff shall proceed to the premises, present to the occupants a copy of the writ and give the occupants an opportunity to vacate voluntarily. If the occupants refuse to vacate or the premises appear unoccupied, the constable or deputy sheriff shall announce his identity and purpose. If necessary, the deputy sheriff, but not a constable, may then enter the premises by force, using the least destructive means possible, in order to effectuate the ejectment. Discretion may be exercised by the constable or deputy sheriff in granting a delay in the dispossession of ill or elderly tenants.

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I am unaware of any provision which mandates a time limit for a law enforcement officer to act to eject a tenant. Obviously manpower considerations may figure into an officer's ability to carry out the ejection.

With best wishes, I am

Very truly yours,

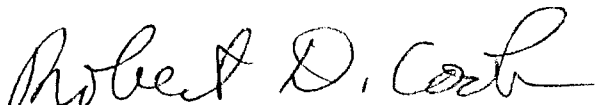


Charles H. Richardson  
Assistant Attorney General

CHR/an

Enclosure

REVIEWED AND APPROVED BY:



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