

1980 WL 131248 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 10, 1980

*1 Mr. John Patrick
Assistant Director
South Carolina Court Administration
P. O. Box 11788
Columbia, SC 29211

Dear John:

In a letter to this office you raised several questions concerning landlord-tenant matters. In your first question you asked whether a check from a tenant to a landlord in payment for the previous month's rent constitutes payment on a pre-existing debt and therefore precludes it from being considered as a fraudulent check within the meaning of [Section 34-11-60, Code of Laws of South Carolina](#), 1976, as amended. In the opinion of this office, a check given in payment for a previous month's rent would constitute payment on a pre-existing debt and therefore would not be within the purview of [Section 34-11-60](#). However, if a check is drawn on or before the day rent is due, such a check would qualify as a fraudulent check assuming all other elements of the offense are shown.

Referencing the above question you asked whether the answer would vary depending upon whether or not the tenant is permitted to continue in the rented premises. While a check given in full or partial payment on a pre-existing debt could not constitute a fraudulent check, a check given for the purpose of

"... securing further advances of money, goods or services ... given in whole or in part payment of a then existing account" (emphasis added.) [Section 34-11-60 \(d\), Code of Laws of South Carolina](#), 1976, as amended,

may come within the definition of a fraudulent check. While this office in an opinion dated October 11, 1973 has construed the interest of a tenant in rented property to constitute "property" so as to permit a charge to be brought pursuant to the fraudulent check statutes, which prohibits the giving of a check in the manner specifically referenced

"... to obtain money, services, credit or property of any kind or nature whatever, or anything of value",

in the opinion of this office, a check given by a tenant in payment of the previous month's rent where the tenant is permitted to continue in the rented premises would not constitute a check given in payment on an account to secure "further advances of money, goods, or services." It does not appear that a tenant's being permitted to remain in rented premises would constitute receipt of "goods or services." Therefore in answer to your request, the response to the first question would remain the same regardless of whether or not the tenant is permitted to remain in the rented premises.

In your remaining question you referenced that in some rental agreements there is a provision for "late charges" for failure to timely tender rent due. Referencing such, you asked whether in a civil action by a landlord against a tenant to recover rents past due, must a magistrate in all cases render in his judgment a sum representing the late charges agreed upon in the contract. In the opinion of this office, there is no requirement that a magistrate render a judgment that would necessarily grant certain damages, such as a "late charge" for failure to timely tender rent due in all cases. Such a decision is a matter of judicial discretion based upon the evidence and testimony admitted.

*2 With best wishes,

Sincerely,

Charles H. Richardson
Assistant Attorney General

Approved By:

Emmet H. Clair
Deputy Attorney General

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