

South Carolina Residential Landlord Tenant Act

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Disclaimer

- ▶ The information provided today is not legal advice. Legal information is not the same as legal advice, which is the application of law to an individual's specific circumstances. The information provided is not a substitute for and does not replace the advice or representation of a licensed attorney. Consult with a licensed attorney if you want assurance that the information provided and your interpretation of it are appropriate for your particular situation.
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Today we will discuss:

- ▶ General provisions
 - ▶ Landlord Obligations
 - ▶ Tenant Obligations
 - ▶ Security Deposits
 - ▶ Remedies
 - ▶ Some Bonus Topics and Resources
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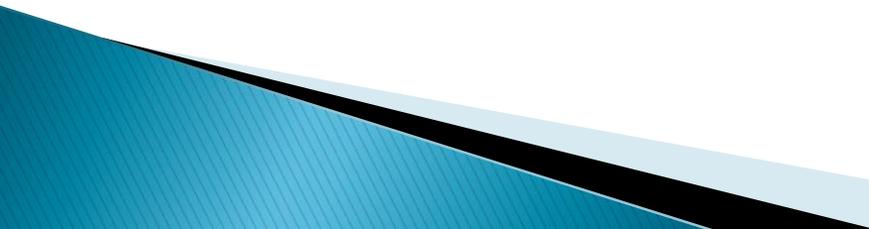
General Provisions

- ▶ Found at 27-40-10 et seq
 - ▶ Does NOT cover: detention facilities, medical, geriatric, educational or religious facilities, transient occupancy in hotels subject to sales tax, occupancy under contract for sale, residence at a charitable or emergency shelter
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Leases

- ▶ Do not have to be in writing
 - ▶ If no writing, generally tenancy is month-to-month
 - ▶ If written agreement isn't signed by both parties but rent is paid/accepted thereunder, same effect as signing
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Landlord Obligations

- ▶ Deliver possession
 - ▶ Maintain premises
 - Comply with building codes
 - Keep premises in fit and habitable condition
 - Make available running water and reasonable amounts of hot water, reasonable heat
 - Maintain HVAC, electrical, plumbing
 - Maintain appliances provided by landlord
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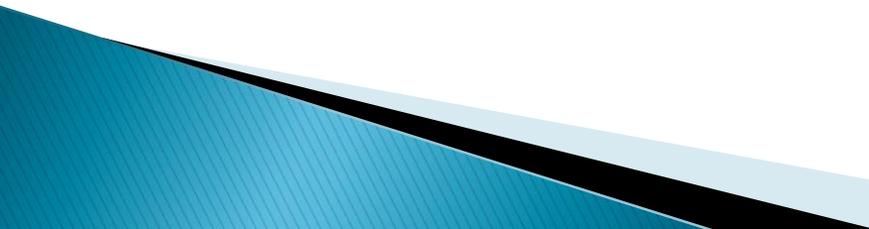
Some case law interpretations

- ▶ Landlord's failure to provide smoke detectors in rental home not actionable. *Robinson v. Code* (S.C.App. 2009) 384 S.C. 582
- ▶ Landlord had to be given notice of defect to be liable for failure to make necessary repairs. *Thompson v. CDL Partners LLC* (2010) 378 Fed.Appx. 288

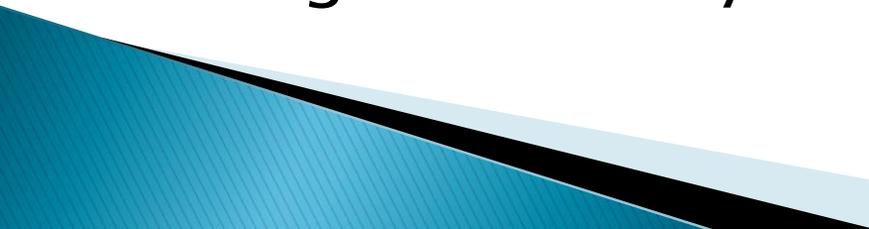
A Few More

- ▶ Landlord's duty to keep premises "fit and habitable" applies to physical qualities. Tenant to keep premises "reasonably safe" is responsible for other safety concerns. *Fair v. U.S.* (S.C. 1999) 334 S.C. 321
- ▶ Landlord did not breach statutory duty of keeping premises reasonably safe where tenant slipped and fell in muddy common area. No duty to warn of obvious conditions. *Pryor v. Northwest Apartments, Ltd.* (S.C.App. 1996) 321 S.C. 524

Tenant Obligations

- ▶ Comply with all building codes
 - ▶ Keep premises safe and reasonably clean
 - ▶ Dispose of garbage in clean and safe manner
 - ▶ Keep plumbing fixtures reasonably clean
 - ▶ Use facilities and appliances in a reasonable manner
 - ▶ Don't destroy premises
 - ▶ Don't disturb others peaceful enjoyment (includes visitors)
 - ▶ Comply with lease and regulations
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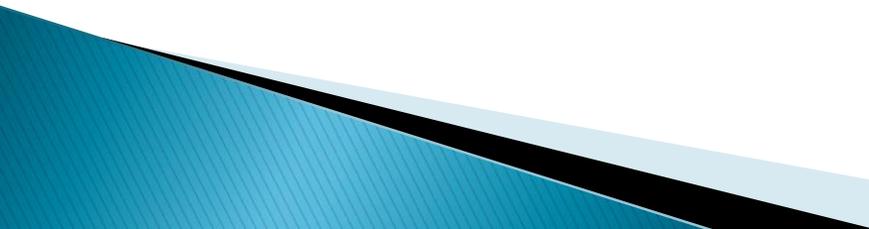
Rules and Regulations

- ▶ Landlord may adopt rules and regulations
 - ▶ Rules and regulations must promote safety of tenants, preserve property from abuse
 - ▶ Must apply to all tenants in fair manner
 - ▶ Tenant must be given notice when renting or when they are adopted
 - ▶ If adopted after tenant enters into rental agreement, they must not substantially modify the tenant's bargain and tenant has to be given 30 days to object in writing
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Access to Premises

- ▶ Landlord (or agent) can enter premises without consent:
 - ▶ Any time in case of emergency
 - ▶ Between 9:00 AM and 6:00 PM for regularly scheduled periodic services, provided the right to enter is in written agreement and landlord (or agent) announces his intent to enter
 - ▶ Between 8:00 AM and 8:00 PM when providing services tenant has requested and landlord (or agent) announces his intent to enter
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Access, continued

- ▶ Tenant shall not unreasonably withhold access. Includes letting landlord (or agent) show premises to prospective buyers.
 - ▶ Landlord shall not abuse right of access or use it to harass tenant.
 - ▶ Except for reasons on previous screen (provide service, in emergency) , landlord shall give 24-hour notice of intent to enter.
 - ▶ Tenant cannot change locks without permission.
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Tenant Remedies

- ▶ Tenant must give landlord written notice of noncompliance materially affecting health and safety or physical condition
 - ▶ Landlord has up to 14 days to remedy breach
 - ▶ Tenant can end agreement if landlord does not make repairs
 - ▶ Agreement continues if landlord makes repairs, starts to make repairs within the time period. Also, tenant cannot end agreement if his own action caused need for repairs
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Also:

- ▶ If the agreement is terminated, landlord shall return the security deposit

Landlord's Failure to Deliver Possession

- ▶ If landlord fails to deliver possession, no rent is owed until possession is delivered.
- ▶ Tenant can terminate agreement upon at least five days' written notice, and landlord shall return prepaid rent and security deposit.
- ▶ Or tenant can demand possession and bring action against landlord and any person wrongfully in possession. Tenant is entitled to actual damages. Landlord not liable for damages if he made reasonable efforts to obtain possession.

Failure to Deliver Possession, continued

- ▶ If failure to deliver possession is wilful and not in good faith, tenant may recover three times monthly rent or two times actual damages (whichever is greater) and reasonable attorney fees

Wrongful Failure to Provide Essential Services

- ▶ If landlord is negligent or wilful in failing to provide essential services (plumbing/sewer; electricity; gas when used for heat, hot water and cooking; running water and reasonable amounts of hot water; heat), tenant may give written notice to landlord and may:
 - ▶ Procure reasonable amounts of the essential service and deduct that money from rent OR
 - ▶ Recover damages for diminution in fair market value and attorney's fees

Failure to Provide Essential Services, continued

- ▶ Tenant's rights do not arise until he has given written notice to the landlord and landlord fails to act within a reasonable time.
 - ▶ Also, tenant does not have these rights if his deliberate or negligent acts or omissions caused problem.
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Landlord's Noncompliance as Defense to Action for Eviction

- ▶ In an eviction based on nonpayment, tenant may use landlord's noncompliance as a defense or counterclaim.
- ▶ Tenant must have given written notice to the landlord

Remedies for Unlawful Ouster or Exclusion

- ▶ If landlord ousts or excludes tenant by failing to provide essential services, tenant may recover possession or terminate agreement. May also recover three months' rent or two times actual damages, whichever is greater, and attorney's fees.
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Landlord Remedies

- ▶ If breach is something other than nonpayment, landlord must give written notice as to breach and state that the agreement may terminate in 14 days.
 - ▶ If tenant remedies the breach in the time period OR if tenant cannot complete in 14 days but starts to remedy the breach, agreement continues.
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Nonpayment

- ▶ If tenant hasn't paid rent when due or within five days of due date, landlord may terminate agreement by giving written notice to the tenant.
 - ▶ Written notice can be included in the lease.
 - ▶ Statute provides suggested language.
 - ▶ Only one notice per lease period
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Personal Property

- ▶ After an eviction, landlord can remove personal property from premises.
- ▶ Written notice must state that the property will be removed and disposed of.

Absence, Nonuse or Abandonment by Tenant

- ▶ Unexplained absence for 15 days after default is abandonment
 - ▶ If tenant voluntarily terminates utilities and there is an unexplained absence after default, no need to wait 15 days.
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Removal of Personal Property

- ▶ If the premises are abandoned or rental period is over and tenant has removed a substantial portion of his property, or if utilities are voluntarily terminated, and personal property remains (fair market value >\$500), landlord may enter and dispose of the property.
- ▶ If the property is worth >\$500, landlord not liable unless grossly negligent.

Security Deposits

- ▶ When tenancy is completed, tenant needs to give written request to landlord, asking for security deposit and giving landlord a forwarding address.
 - ▶ Landlord has 30 days to respond: refund the money, provide explanation of any money withheld (accrued rent, damages to premises).
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Security Deposits, continued

- ▶ If landlord fails to respond, tenant can bring an action for three times the amount wrongfully withheld and attorney's fees.

Other Provisions

- ▶ Landlord may enforce collection of rent by distress – see 27–39–210 et. seq.
 - ▶ Landlord has right to file action for possession as well as rent, and has a claim for actual damages for breach of the agreement, and attorney's fees.
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Retaliatory Conduct Prohibited

- ▶ Landlord shall not raise rent above fair market value or decrease essential services or bring an action for possession if tenant complains to governmental agency about housing codes.
 - ▶ If landlord acts in violation of this, tenant can bring action for possession
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Tenant Rights in Foreclosed Property

- ▶ Written leases survive foreclosure
 - ▶ Exception: if new buyer intends to live in the home as primary residence, then tenant gets 90 days
 - ▶ If month-to-month, tenant gets 90 days
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Public/Subsidized Housing

- ▶ Tenant may have additional rights and responsibilities in public or subsidized housing
 - ▶ Landlord may have additional responsibilities, too
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Magistrate's Court

- ▶ Magistrates have jurisdiction over landlord-tenant matters
 - ▶ Eviction actions have short notice periods
 - ▶ Defendants must request hearings and then show up for the hearing
 - ▶ Appeal is to Circuit Court
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Filing a Complaint at SCDCA

- ▶ Landlord-tenant complaints: from January 1, 2014 to March 5, 2015, 176 landlord-tenant complaints filed at SCDCA
 - 82 were about repairs
 - 38 were about security deposits

www.consumer.sc.gov

Other Resources

- ▶ Legal Aid: 888-346-5592
- ▶ <http://www.lawhelp.org/SC>
- ▶ SC Bar Lawyer Referral: 800-868-2284
- ▶ SCLawAnswers:
<http://www.sclawanswers.org/>
- ▶ Magistrate Court Manual:
<http://www.scbar.org/public/files/docs/magctgd.pdf>