

Introduction to Defending a Tenant served a Rule to Vacate

Grounds:

1. Failure to pay rent when due or demanded
2. End of lease or term of tenancy has ended
3. Violation of Lease: Plaintiff must state the violation with sufficient detail as to meet Rule 8, SCRCP.

I. Preliminary Jurisdictional Issues

1. Is the Plaintiff the owner of the Property? Then they may self-represent. Confirm claim of ownership, if there are multiple owners then Plaintiff needs consent of joint owners to proceed. If they are not the owner or representative of joint owners, then **Move for Dismissal for lack of standing**
2. Is Plaintiff the Property Manager? If Plaintiff is the Property Manager, then they need to prove they are contracted to manage by the true owner(s) and they are either employed with a licensed property manager with a non-attorney representation designation or they are represented by licensed counsel. If they are not contracted to manage by the owner(s), then Move for Dismissal for lack of standing. If they are not a licensed manager as to this property with a non-attorney designation form or licensed counsel, **Move for Dismissal for Unlicensed Practice of Law**
3. Is Tenant in possession of the property or have they vacated premises? If tenant has returned possession to Landlord, then Move for Dismissal under 12(b)(6). If tenant returned possession to Landlord with written notice or security deposit demand and return of keys prior to filing, then you may have a frivolous filing by landlord and could raise argument for damages under **Rule 11 and/or §27-40-910**

II. Failure to Pay Rent:

1. Can the Tenant prove they paid the full amount of rent due on the lease, when the payment was due?
 - a. Did the amount of Rent landlord claimed was due each rental period match the amount of rent stated in the Lease Agreement?
 - b. Is the Tenant within the initial Term of Lease?
 - c. If Tenant is in the initial Term of Lease and Tenant can prove compliance with the payment of the Rent amount, then Landlord is either adding fees or disputing the amount of the rent.
 - i. Fees: What does the lease say about the types of fees that may be assessed and do the amounts match? (The Act includes permissible late fees are part of claim for rent, but it does not include other charges)
 1. Late Fees: Does the lease state a Late Fee and are they in excess of 20% of the rent? If yes, Challenge for unconscionability of term and seek reformation
 2. For all other Fees that are not permissible late charges, **object to the charges as not rent within §27-40-210 (11) and move for dismissal of the claim for nonpayment of rent**
 3. Returned Check Fee: Is it commercially reasonable (i.e. \$25-\$50)? If No, Challenge for unconscionability of term and seek reformation

4. Pet fees: If charged a Pet fee, do they actually have a pet? If no, then dispute the fee where inappropriate to assess
 5. Maintenance Fee: Is tenant being shifted the burden of Landlord to maintain the premises, see §27-40-440 (d). (Note: If the rent term specifies that total Rent is X dollars and that includes certain expenses such as yard maintenance service or utilities are paid by Landlord, then this is “Rent” and not a Fee.)
 6. Pest Control Fee: Charleston County Ordinance 113.5.4.3 specifies the Property Owner is responsible for the pest control of a residential dwelling (note: this does not mean Tenant cannot be assessed Damage charges for causing an infestation, only that Pest Control may not be billed separately as a regular charge and it is not “Rent”)
- ii. Increased Rent during initial term
1. Is this a Subsidized Tenancy with written notice of change in rent subsidy? **If yes Move for a Continuance and Refer case for a LLT Attorney** where this goes beyond SCRLTA
 2. If this is not a Subsidized Tenancy, did tenant sign a modification of the Rental Agreement for some consideration on both sides of the transaction? If No, you dispute the rent amount alleged and demonstrate compliance with the lease and seek verdict in favor of compliant tenant. If there is a modification with no consideration for the increased rent (such as change in due date to accommodate Tenant’s pay schedule), **challenge the modification on contract grounds for failure of consideration**
2. Does the Lease contain the following language: "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." §27-40-710
 - a. Is the statement verbatim or substantially similar?
 - b. Is it conspicuous within the lease?
 - c. If the answer is “No” to any of the questions above, then go to number 2
 3. Did the Landlord issue a written demand for rent to this tenant at any time during this tenancy and give five (5) days for tenant to comply with the demand before filing?
 - a. If Landlord **never** issued a written demand and the language from §710 is not included in the lease in a conspicuous manner, then your **defense** is Landlord has failed to meet the Notice and Opportunity to Cure requirements of §710 prior to filing, and **Move for Dismissal**
 - b. If the tenant was not given five (5) days of grace for rental payment compliance, then your Defense is that §27-40-330 Prohibits waiver of rights or remedies by agreement, waiving the time for compliance is a right under the Act and prohibited agreements will be unenforceable, and **Move for Dismissal**
 4. If the tenant is truly in default of rent, then will the Landlord permit time to file an application for emergency rental assistance with Charleston Trident Urban League or enter a compliance plan? **Move for a Continuance and give tenant the contact information for rental assistance**