

CHAPTER 37
Ejectment of Tenants

SECTION 27-37-10. Grounds for ejectment of tenant.

(A) The tenant may be ejected upon application of the landlord or his agent when (1) the tenant fails or refuses to pay the rent when due or when demanded, (2) the term of tenancy or occupancy has ended, or (3) the terms or conditions of the lease have been violated.

(B) For residential rental agreements, nonpayment of rent within five days of the date due constitutes legal notice to the tenant that the landlord has the right to begin ejectment proceedings under this chapter if a written rental agreement specifies in bold conspicuous type that nonpayment of rent constitutes such notice. This requirement is satisfied if the written rental agreement contains the notice specified in Section 27-40-710(B).

HISTORY: 1962 Code Section 41-101; 1952 Code Section 41-101; 1946 (44) 2584; 2000 Act No. 409, Section 5.

SECTION 27-37-20. Ejectment proceedings.

Any tenant may be ejected in the following manner, to wit: Upon application by the landlord or his agent or attorney any magistrate having jurisdiction shall issue a written rule requiring the tenant forthwith to vacate the premises occupied by him or to show cause why he should not be ejected before the magistrate within ten days after service of a copy of such rule upon the tenant.

HISTORY: 1962 Code Section 41-102; 1952 Code Section 41-102; 1946 (44) 2584; 1950 (46) 2305.

SECTION 27-37-30. Service of rule; posting and mailing requirements.

(A) The copy of the rule provided for in Section 27-37-20 may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State. The methods of service described in subsections (B) and (C) may be used as alternatives to the method of service described in this subsection.

(B) When no person can be found in possession of the premises, and the premises have remained abandoned, as defined in Section 27-40-730 for residential rental agreements and in Section 27-35-150 for nonresidential rental agreements, for a period of fifteen days or more immediately before the date of service, the copy of the rule may be served by leaving it affixed to the most conspicuous part of the premises.

(C) When service as provided in subsection (A) has been attempted unsuccessfully two times in the manner described in item (1), a copy of the rule may be served by affixing both it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in item (2):

(1) Each of the two attempts to serve the defendant must be separated by a minimum of forty-eight hours and must occur at times of day separated by a minimum of eight hours. The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the premises.

(2) For mailing by ordinary mail to be considered to complete service under this item, it must be accomplished by placing a copy of the rule and documentation of the prior attempts at service in an envelope in the presence of the clerk of the magistrates court. The clerk is responsible for verifying that the envelope is addressed to the defendant at the address shown in the rule as the rental premises of the defendant or another address for receipt of mail furnished in writing by the tenant to the landlord, that the envelope contains the necessary documents, and that the clerk has placed the sealed and stamped envelope in the United States mail. The clerk's verification must be made a part of the record in the case, and service by

ordinary mail is not considered complete without the clerk's verification. A fee as provided for in Section 8-21-1010(14) must be collected by the magistrate or his clerk for the verification and mailing in this item.

(3) Mailing of the rule constitutes service when the requirements of items (1) and (2) have been met and ten days have elapsed from the time of mailing. If these requirements have been met, the specified time period for the tenant to show cause why he should not be ejected as provided in Section 27-37-20 begins to run on the eleventh day after mailing. However, if the tenant contacts the magistrates court prior to the eleventh day, the specified time period for the tenant to show cause as provided in Section 27-37-20 must begin to run at the time of contact.

HISTORY: 1962 Code Section 41-103; 1952 Code Section 41-103; 1946 (44) 2584; 1999 Act No. 61, Section 1; 2000 Act No. 409, Section 6.

SECTION 27-37-40. Tenant ejected on failure to show cause.

If 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.

HISTORY: 1962 Code Section 41-104; 1952 Code Section 41-104; 1946 (44) 2584; 1950 (46) 2305.

SECTION 27-37-50. Change of venue.

The magistrate may grant a change of venue in an ejectment case as in any other civil case on a proper showing.

HISTORY: 1962 Code Section 41-105; 1952 Code Section 41-105; 1946 (44) 2584.

SECTION 27-37-60. Trial of issue.

If the tenant appear and contest ejectment the magistrate shall forthwith hear and determine the case as any other civil case, allowing trial by jury if demanded by either party.

HISTORY: 1962 Code Section 41-106; 1952 Code Section 41-106; 1946 (44) 2584.

SECTION 27-37-70. Designation of parties in ejectment.

In any trial before the magistrate in an ejectment case either with or without jury the landlord may be designated as plaintiff and the tenant as defendant.

HISTORY: 1962 Code Section 41-107; 1952 Code Section 41-107; 1946 (44) 2584.

SECTION 27-37-80. Jury trial.

Either landlord or tenant may demand trial by jury. In such case a jury shall be summoned and a jury trial had as in any other civil case. Upon the testimony offered, under instructions by the magistrate as to the law, the jury shall find for either the landlord or tenant as in any other civil case.

HISTORY: 1962 Code Section 41-108; 1952 Code Section 41-108; 1946 (44) 2584.

SECTION 27-37-90. New trial.

When a jury is had in an ejectment case the magistrate may grant a new trial as in any other civil case.

HISTORY: 1962 Code Section 41-109; 1952 Code Section 41-109; 1946 (44) 2584.

SECTION 27-37-100. Effect of verdict for plaintiff.

If the verdict be for the plaintiff the 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.

HISTORY: 1962 Code Section 41-110; 1952 Code Section 41-110; 1946 (44) 2584.

SECTION 27-37-110. Effect of verdict for defendant.

If the verdict be for the defendant then the tenant shall remain in possession until (a) the termination of his tenancy by agreement or operation of law, (b) failure or neglect to pay rent or (c) ejected in another proceeding under this chapter or by the judgment of a court of competent jurisdiction.

HISTORY: 1962 Code Section 41-111; 1952 Code Section 41-111; 1946 (44) 2584.

SECTION 27-37-120. Appeal.

Either party may appeal in an ejectment case and such appeal shall be heard and determined as other appeals in civil cases from the magistrate's court.

HISTORY: 1962 Code Section 41-112; 1952 Code 41-112; 1946 (44) 2584.

SECTION 27-37-130. Bond required to stay ejectment on appeal.

An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby. In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate.

HISTORY: 1962 Code Section 41-113; 1952 Code Section 41-113; 1946 (44) 2584; 1950 (46) 2305.

SECTION 27-37-140. Action of tenant wrongfully dispossessed.

In case any tenant is wrongfully dispossessed he may have an action for damages against the landlord.

HISTORY: 1962 Code Section 41-114; 1952 Code Section 41-114; 1946 (44) 2584.

SECTION 27-37-150. Accrual of rent after institution of proceedings.

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.

HISTORY: 1962 Code Section 41-115; 1952 Code Section 41-115; 1950 (46) 2305.

SECTION 27-37-155. Commercial lease contract claims and counterclaims.

(A) In any action involving a commercial lease where the landlord sues for possession and the tenant raises defenses or counterclaims pursuant to this chapter or the lease agreement:

(1) the 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 and the landlord is required to provide the tenant with a written receipt for each payment except when the tenant pays by check; and

(2) the tenant is required to pay the landlord all rent allegedly owed prior to the issuance of the rule; provided, however, that in lieu of the payment the tenant may be allowed to submit to the court a receipt and cancelled check, or both, indicating that payment has been made to the landlord.

(B)(1) In the event a jury trial is requested and upon motion of either party or upon his own motion, the magistrate may order that the commercial lease ejectment case be heard at the next term of court following the tenant's appearance.

(2) In the event that the amount of rent is in controversy, the court shall preliminarily determine the amount of rent to be paid to the landlord.

(3) If the tenant appears in response to the rule and alleges that rent due as provided by Section 27-37-150 and this section has been paid, the court shall determine the issue. If the tenant has failed to comply with Section 27-37-150 and this section, the court shall issue a warrant of ejectment and the landlord must be placed in full possession of the premises by the sheriff, deputy, or constable.

(4) If the amount of rent due is determined at final adjudication to be less than alleged by the landlord, decision must be entered for the tenant if the court determines that the tenant has complied fully with the provisions of Section 27-37-150, this section, and the lease agreement.

(5) If the court orders that the tenant pay all rent due and accruing as of and during the pendency of the action as provided by Section 27-37-150 and this section, the order may require the payments to be made (a) directly to the commercial landlord or to the clerk of court, to be held until final disposition of the case, or (b) through the magistrate's office. If payments are to be made through the magistrate's office, a fee of three percent of the rental payment must be added to the amount paid through the office and the fee of three percent shall be retained in the collecting magistrate's office to defray the costs of collection. If the tenant fails to make a payment as provided in Section 27-37-150 and this section, the tenant's failure to comply entitles the landlord to execution of the judgment for possession and, upon application of the landlord, the magistrate shall issue a warrant of ejectment and the landlord must be placed in full possession of the premises by the sheriff, deputy, or constable.

HISTORY: 2006 Act No. 361, Section 1, eff June 9, 2006.

SECTION 27-37-160. Execution of writ of ejectment.

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 twenty-four hours to vacate voluntarily. If the occupants refuse to vacate within twenty-four hours 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. If the premises appear to be occupied and the occupant does not respond, the constable or deputy sheriff shall leave a copy of the writ taped or stapled at each corner and attached at the top of either the front or back door or in the most conspicuous place. Twenty-four hours following the posting of the writ, if the occupants have not vacated the premises voluntarily, 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.

HISTORY: 1986 Act No. 336, Section 3; 1994 Act No. 465, Section 1.