

## **4.0 Landlord/Tenant Issues**

### **4.1 Overview**

This chapter focuses on South Carolina statutory and common law regarding the rights of landlords and tenants with respect to residential leases. Be wary of relying on resource materials that may include general statements of what the law usually is across the nation, as South Carolina is quite different from the laws of other states, particularly regarding statutory landlord-tenant law. Subsidized housing, like public housing or “Section 8”, is beyond the scope of this chapter and the answers to the questions in this chapter may be different for these forms of housing.

### **4.2 Most Common Issues/Questions**

- Is a tenant entitled to terminate a lease if the dwelling is completely or partially unusable?
- May a tenant withhold rent owing due to a landlord’s failure to repair the dwelling after the disaster?
- What recourse does a tenant have if she cannot pay rent because of a lost job or wages?
- What should a tenant do if a landlord tries to evict the tenant following the disaster?
- Does a tenant have any right to recover against any party, including a landlord or neighbor, because of personal property loss or damage?

### **4.3 Summary of the Law**

The landlord-tenant relationship in residential leases is governed by section by the South Carolina Residential Landlord-Tenant Act (SCRLTA) which is found in title 27 section 40 of the South Carolina Code. The SCRLTA governs the rights and obligations of parties to a rental agreement for a “dwelling unit” that is located in South Carolina, regardless of where the rental agreement was made. S.C. Code § 27-40-110. A “dwelling unit” is any structure or part of a structure that is used as a home, residence, or sleeping place by one or more persons who maintain a household. This includes landlord-owned mobile homes but does not include property that is leased exclusively for the purpose of being renovated by the tenant. S.C. Code § 27-40-210(3).

It is important to note that SCRLTA does not cover commercial leases or leases for land only. SCRLTA does not cover the following arrangements as well:

- 1) residence at an institution whether public or private;
- 2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;
- 3) occupancy by a member of a fraternal or social organization in the portion of the structure operated for the benefit of the organization;
- 4) transient occupancy in a hotel, motel or other accommodations

- 5) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment;
- 6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;
- 7) occupancy under a rental agreement covering the premises used primarily for agricultural purposes;
- 8) occupancy under rental agreement in premises regulated by Chapter 32 of Title 27 of the 1976 Code (vacation time sharing plans); and
- 9) residence, whether temporary or not, at a charitable or emergency protective shelter, public or private.

The purposes of SCRLTA are to 1) simplify, clarify, modernize, and revise the law governing rental of dwelling units and the rights and obligations of landlords and tenants; 2) to encourage landlords and tenants to maintain and improve the quality of housing.

Finally, it is important to note that all parties have an obligation to act in good faith before they may seek any remedies available by the SCRLTA.

#### **4.4 Assistance Numbers**

American Red Cross Disaster Services Relief Hotline	1-800-733-2767
Federal Emergency Management Agency (FEMA)	1-800-612-3362
Small Business Administration	803-765-5377
South Carolina Attorney General	1-803-734-3970
State Bar of South Carolina Legal Disaster Hotline	1-877-797-2227 ext. 120

#### **4.5 FAQs-General**

***Q. 1 What are my rights if I want to terminate my lease on my dwelling, following the disaster?***

Following a disaster, section 27-20-650(a) provides if the damages are such that normal use and occupancy of the unit is “substantially impaired” you (the tenant) have two options. First, you may immediately vacate the premises and notify the landlord in writing of your intent to terminate the rental agreement. If you notify the landlord within seven days after you move out, the lease terminates as of the date you moved. Second, if continued occupancy is lawful, you may vacate the portion of the dwelling that is unusable and continue to use the rest. Your rent should be reduced in proportion to the reduction in the unit’s fair market rental value.

***Q. 2 May I withhold payment of rent because of the disaster or because the landlord has failed to timely repair the dwelling after the disaster?***

You should not stop paying rent without speaking to a lawyer. You should not make the repairs yourself and deduct the cost from rent without speaking to a lawyer. Section 27-40-610(b) permits a tenant to bring an action for injunctive relief if the tenant would prefer to remain in the rental unit and require the landlord to make repairs. South Carolina courts do require that notice be given to the landlord to make repairs before bringing an action for damages or injunctive relief.

Section 27-40-910(a) does protect the tenant from retaliation by the landlord if the tenant complains of a violation materially affecting health and safety to a government agency or complains to the landlord of a violation of the SCRLTA. Retaliation is defined as 1) raising the rent beyond fair market value, 2) decreasing essential services; or 3) refusing to renew the tenant's lease.

***Q. 3 My current unit is uninhabitable due to a disaster, but my landlord has another available. Is landlord required to make the other unit available? Can landlord make me sign another lease contract extending the length of my lease in order to move to the new unit?***

The landlord is not required to make another unit available to you. Your landlord would be allowed to ask you to sign a new or longer lease in order to move into a different unit.

***Q. 4 Do I have to keep paying rent to my landlord while I am not living at my house/apartment?***

If you want to continue renting that house/apartment, then you should continue paying rent unless (1) you and your landlord can come to a different agreement (preferably in writing), or (2) you file an action for injunctive relief and the court decides that you don't have to pay until your landlord makes repairs. The risk if you stop paying is that your landlord files for eviction. While it's not impossible, it can be difficult to avoid eviction if that happens.

***Q. 5 What can happen and what should I do if I cannot pay the rent on my dwelling because of job or salary interruptions following the disaster?***

If you experience trouble paying your rent following a disaster you may be eligible for assistance from the Federal Emergency Management Agency (FEMA). You may ask about FEMA by calling 1-800-621-3362. You may contact the Small Business Association office at 803-765-5377 if FEMA's assistance is not enough. Finally, you may also ask about other assistance by visiting [www.disasterassistance.gov](http://www.disasterassistance.gov). Unfortunately, being unable to pay your rent, even if it's not your fault, is not a legal defense if your landlord files for eviction.

***Q. 6 How could I pay rent if I wanted to?***

It is recommended that you contact your landlord to determine what methods of payment may be viable. Should you be unable to successfully contact your landlord, sending a personal check via certified mail to the address set forth in the lease agreement or the last provided address, if different, is advisable. Depending on the landlord, they may also have a website and have payment or other information related to the disaster on such site.

***Q. 7 Can my landlord rent my home/apartment to someone else while I am gone?***

Not unless the lease says they can. The landlord must honor the lease unless there is a valid reason to terminate it.

***Q. 8 How do I contact my landlord?***

It is best to try every means of communication available, including, but not limited to: telephone calls to every available phone number, e-mail correspondence, and letters sent via mail to the address set forth in the lease agreement or last provided address, if different. Depending on the landlord, it may also have a website and have contact or other information related to the disaster on such site. You should document all efforts and attempts to contact your landlord.

***Q. 9 My landlord told me to move out because the dwelling is totally unusable after the disaster. Do I have to move out?***

You do not have to move out just because your landlord says so. You can only be forced to move out if (1) a governmental authority (e.g. code enforcement) officially determines that the dwelling is not habitable and orders you to move out, or (2) your landlord files for eviction and a court orders you to move out. You should always consider whether it is safe for you and/or your family to stay if the dwelling has been damaged.

***Q. 10 My landlord told me to move out the next day because he wants the dwelling for his daughter who lost her house in the flood. He told me if I didn't move out, he'd change the locks. Do I have to move out?***

No. The landlord must honor the terms of the lease. The lease agreement governs the relationship between the parties. The lease may be verbal or in writing, however, if the agreement is for more than one year it must be in writing. S.C. Code §27-35-10 and 20.

An unlawful ouster or exclusion occurs when the landlord unlawfully removes or excludes a tenant from the premises or willfully reduces, interrupts, or causes the interruption of essential services. S.C. Code § 27-40-660. This would include changing the locks.

The tenant's remedies for unlawful ouster or exclusion are substantial. The tenant may file an action to recover possession or he may terminate the rental agreement and, in either case, recover an amount equal to three months' periodic rent or twice his actual damages, whichever is greater, along with reasonable attorney's fees. If the rental agreement is terminated, the landlord is required to return the tenants security deposit and prepaid rent according to § 27-40-410.

***Q. 11 What should I do if I am served with an eviction lawsuit?***

You should carefully review the papers you were served with to determine when your deadline is to respond and whether any court dates have been scheduled. In an eviction action, the tenant has 10 days to request a hearing after they are served with eviction papers (called a "Rule to Vacate or Show Cause"). If the tenant doesn't ask for a hearing in that time, the court will likely order that the tenant be evicted.

Prior to filing an ejectment action, a landlord must have properly terminated the tenant's lease. The court must then ensure that it has jurisdiction both over the subject matter of the case and over the parties before it may render a valid judgment.

Once an ejectment action is filed, rent continues to accrue. If the landlord accepts payment from the tenant of any rent, whether it accrued before the ejectment action was filed or it accrues afterward, the landlord does not waive his right to proceed with the ejectment. If the landlord had the right to ejectment at the time the action was filed, he retains that right regardless of his acceptance of rent. S.C. Code § 27-37-150. In a residential tenancy covered by the SCRLTA, if the tenant raises defenses or counterclaims to the ejectment, the tenant is required to continue paying rent as it accrues and must pay any back rent that had accrued at the time the ejectment action was filed. If either of these amounts are in dispute, prospective rent or back rent, the court should hold a hearing to determine what amount is appropriate based on the fair rental value of the property at the time of the hearing. S.C. Code § 27-40-790.

If you request a hearing, you will have the opportunity to tell the judge your side of the story. You can tell the judge about any defenses to eviction you might have, for example: the landlord did not properly terminate the lease; landlord did not give a notice and opportunity to cure any alleged nonpayment or lease violations; or the landlord is retaliating against the tenant for asking for repairs. A judge can order the tenant's eviction for violating the terms of her lease, not paying rent, or not moving out after her lease expired and the landlord gave proper notice ending the lease.

***Q. 12 How can I recover my personal property from the leased premises?***

FEMA and federal security officials are going to be in control of when and how evacuees can return to their homes.

Between evacuation and when the agencies permit a return, the best advice we can give an evacuee is to try to contact the landlord and determine whether the landlord (i) knows anything about the condition of the property, and (ii) has been able to do anything to secure the property.

***Q. 13 What if my landlord will not make repairs?***

Section 27-40-610(b) permits you (the tenant) to bring an action for injunctive relief if you would prefer to remain in the rental unit and require the landlord to make repairs. South Carolina courts do require that notice be given to the landlord to make repairs before bringing an action for damages or injunctive relief. Section 27-40-910(a) does protect you from retaliation by the landlord if you complain of a violation materially affecting health and safety to a government agency or complains to the landlord of a violation of SCRLTA. Retaliation is defined as 1) raising the rent beyond fair market value, 2) decreasing essential services; or 3) refusing to renew the tenant's lease.

#### **4.6 FAQs- Fraud and Negligence**

***Q. 14 May I recover damages against my landlord for injuries or property damage I suffered as a result of the disaster?***

When the injury or property damage results from a natural disaster and not from the landlord's negligence, the landlord is not liable for such injury or property damage. However, the landlord can be sued if the landlord's negligence caused or contributed to your injuries or damage from the disaster.

***Q. 15 I have suffered personal injuries, or loss or damage to my personal belongings from the disaster. May I recover damages against my landlord or the previous homeowner if they knew about the possibility of flooding and failed to inform me?***

If the landlord or seller made an affirmative misrepresentation concerning the possibility of flooding, the tenant or buyer may be able to sue the landlord or seller for fraud to recover for property damages or personal injuries. If you knew, however, that the property could flood or did not rely on the affirmative misrepresentation, then you will probably not be able to recover damages.

If the landlord or seller said nothing about the possibility of flooding, then you will probably not be able to recover any damages. Generally, the mere failure to disclose a fact known by the seller or landlord is not fraud. However, failure to disclose the possibility of flooding may, under certain circumstances, support a lawsuit against a landlord or seller who knew of past flooding or knew of the possibility of flooding. Active concealment of known past flooding (for example, painting over flood water marks on walls) may also be the basis for tenant recovery. See 37 Am. Jur. 2d, Fraud and Deceit, 144–146.

***Q. 16 Can I recover damages against my landlord or the previous homeowner if they didn't know about the possibility of flooding?***

No. As a rule, the tenant or buyer cannot recover from the landlord or previous owner a loss or damage from flooding if the landlord or previous owner knew nothing about past flooding or the possibility of flooding and did not tell the tenant or buyer that the property was not subject to flooding.

#### **4.7 FAQs - Insurance**

***Q. 17 All of my personal belongings were destroyed at the place I rent. What help can I get from my insurance company?***

If you have renter's insurance, you should contact them as soon as possible. Your renter's insurance will tell you what damage is covered.

***Q. 18 What if I do not have insurance or my insurance does not cover the damage to my property?***

Check with your landlord to see if they have insurance that may help cover the damages to your property. You may be able to get legal assistance from the Federal Emergency Management Agency (FEMA). You may ask about FEMA by calling 1-800-621-3362 or visit [www.fema.gov](http://www.fema.gov). You may ask about other assistance by visiting [www.disasterassistance.gov](http://www.disasterassistance.gov).

***Q. 19 If my personal belongings are lost or damaged as a result of the hurricane, flood or other disaster, may I recover damages from my landlord under the landlord's hazard insurance policy?***

No. The landlord has no “insurable interest” in your property, and therefore, the landlord’s hazard insurance cannot (and does not) insure your personal property.

However, if the damage or loss of your property is due in whole or in part to the landlord’s negligence, you may be able to sue the landlord and the loss may be covered by the landlord’s liability insurance carrier.

***Q. 20 Is flood damage to my home covered under my insurance policy?***

Usually, you need separate insurance for damage caused by flooding. You should check to see if this coverage is included in your insurance policy.

Flood insurance may be purchased from the federal government under the National Flood Insurance Program (NFIP). You can buy policies from any state-licensed local agent if your community is participating in the NFIP. There is usually a thirty-day grace period after purchasing flood coverage until it goes into effect. Visit <http://www.fema.gov/medialibrary/assets/documents/272?id=1404> for information and Frequently Asked Questions.

***Q. 21 May I recover damages against my neighbor whose property damaged my property during the disaster?***

The general rule is that a person is not liable for injuries or damages caused by a natural disaster or “Act of God” where there is no fault of negligence on the part of the owner whose property caused damage to others during the disaster. Therefore, your neighbor is liable only when he or she was negligent and such negligence was a cause of the damage. See 1 Am. Jur. 2d, Act of God, 11, 15; and 57 Am. Jur. 2d, Negligence, 669

***Q. 22 What can I do with someone else's property, which the disaster carried onto my land?***

When personal property is carried away by flood, wind or explosion onto the land of another, such personal property still belongs to the original owner and the original owner may enter and retrieve it. If the landowner refuses to let the owner of the personal property enter, or if the landowner appropriates the property for the landowner’s own use, the owner of the personal property can sue the landowner for the value of the property. The landowner is an “involuntary bailee” and has the right to possession of the property against all others, except the true owner. The landowner may, if necessary, move the property to use the land, provided it is done in a reasonable manner. The landowner may not damage the property either intentionally or through gross negligence. See 1 Am. Jur. 2d, Abandoned, Lost, Etc., Property, 24–27.

***Q. 23 May I sue the local, state or federal government for damages caused by the disaster?***

Under some circumstances, the government may have liability if its employees were negligent and caused the damages. However, under the doctrine of “sovereign immunity,” governmental authorities are generally immune from liability for the negligent acts of their agents and employees. The doctrine of sovereign immunity normally applies to “governmental functions” such as crime prevention, flood control, firefighting, preservation of health, etc.