

All About Evictions

By SC Appleseed Legal Justice Center

This is a guide to evictions. Have more questions? Contact us at info@scjustice.org

Key Words to Know

Eviction - An eviction is a court order that allows law enforcement to remove you from a rental property.

Rule to Vacate or Show Cause - a legal notice that you are about to be evicted. This should be handed to the renter directly, but it can also be posted on the property

Writ of Ejectment - legal paper that says you must move or the sheriff will remove you and your belongings from the property.

Term of Years/Yearly Lease - A lease that has a specific and written start and end date. These rental agreement leases can be extended if both parties agree to do so.

Tenancy at Will - A lease or rental agreement with no fixed ending. These leases can be month-to-month or week-to-week.

Q: What happens when I'm served with a Rule to Vacate or Show Cause?

Once you're served with a Rule To Vacate or Show Cause, you have 10 days to ask the court for a hearing. One of the easiest ways to do this is to call the Magistrate Court directly, using the phone number on the Rule to Vacate document, and request a hearing.

Q: How do I know if I'm going to be evicted?

The eviction process begins when you are served a legal document called a Rule to Vacate or Show Cause. This document must be either handed to you directly or posted on the property.

Q: If the court evicts me, what happens?

You will be served with a legal order called a **Writ of Ejectment**. Similar to the Rule to Show Cause, this document will either be given to you in person or posted on the property. This is a formal notice stating that you have 24 hours to move out of your rental unit after you receive the notice. If you don't move in 24 hours, law enforcement can remove you, and your belongings, from the property.

Q: What if I don't request a hearing?

If you do not call the magistrate court to request a hearing or do not show up to your court hearing, the court will assume you do not have a defense against the eviction and will formally evict you.

What are the reasons a landlord can evict me?

There are several different reasons landlords can file evictions against tenants in South Carolina.

Nonpayment of Rent

If rent isn't paid within five days of the due date, the landlord can terminate the rental agreement and begin the eviction process. The landlord must give the tenant a 5 day written notice of late rent. Keep in mind, the landlord only has to give written notice of late rent payments ONCE during the entire lease term.

Breach of Terms of the Lease (verbal or written)

If a tenant doesn't follow the terms of the rental agreement, the landlord can terminate the agreement and begin the eviction process.

The lease terms a tenant violates can be verbal or written, HOWEVER, the landlord MUST give a written notice to the tenant that specifically says what the tenant did to violate the agreement.

Abandonment of rental unit

This type of eviction happens when you do not pay your rent AND have left your rental unit for 15 days after the rent is due.

When the lease term has ended:

A lease "term" means different things based on a person's situation. Lease terms can either be in a Term of Years or a Tenancy At Will.

- a. **Term of Years/Yearly Lease:** Lease with a start date and end date. This type of term lasts for a specified length of time, and breaking the lease is treated like breaking any other contract
- b. **Tenancy At Will:** There is no fixed ending period for the lease unless one party wants to end the lease.

Depending on the type of lease, the landlord and tenant are able to terminate the lease at any time

If you are under a week-to-week lease, meaning you pay the landlord weekly, the landlord or tenant terminating the lease must give the other party 7 days notice

If you are under a month-to-month or yearly lease, the landlord or tenant has to give the other party a 30 days notice that they are ending the lease contract.

If the landlord does not give the tenant the above advanced notices when terminating the lease, theoretically they shouldn't be able to kick them out.

What Does an Eviction Notice Look Like?

STATE OF SOUTH CAROLINA)
 COUNTY OF _____)
 _____)
 PLAINTIFF(S))
 VS.)
 _____)
 DEFENDANT(S))

CIVIL CASE NUMBER _____
 IN THE MAGISTRATE'S COURT

RULE TO VACATE OR SHOW CAUSE
 (Eviction)

Upon the Application for Ejectment filed by the plaintiff, _____, which states that:

You, _____ the defendant and lessee of the premises located at _____, SC _____ are ordered to vacate the premises immediately or to contact Magistrate _____ located at _____, SC _____, PHONE: _____ before the _____ day of _____, 20____ for the purpose of showing why you should not be ejected from these premises.

Failure to vacate the premises or to respond before the above date, may result in the issuance of a writ of ejectment.

Dated: _____ MAGISTRATE

STATE OF SOUTH CAROLINA)
 COUNTY OF _____)
 _____)
 PLAINTIFF(S))
 VS.)
 _____)
 DEFENDANT(S))

CIVIL CASE NUMBER _____
 IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT
 (Eviction)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon the judgment of this court, rendered on _____ day of _____, 20____; you are hereby ordered to proceed to the premises located at _____, SC _____.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them that they have **twenty-four (24) hours to voluntarily vacate** the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, a **deputy sheriff may enter the premises** using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall **remove from the premises any occupants and all items of personal property found on the premises**. Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty-eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty-eight (48) hours.

Dated: _____ MAGISTRATE

- _____, being duly sworn state that:
- I personally served a copy of this Writ on _____, an occupant of the rental unit.
 - On _____, 20____, at _____, the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premises. On _____, 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
 - Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
 - The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
 - Informed by Plaintiff that case is settled.

Dated: _____ Sheriff/Deputy Sheriff/Constable

Made Fillable by eForms

This document is a Rule to Vacate or Show Cause. This is the document you would receive when the landlord starts the eviction filing. Notice that this document provides the option to contact the Magistrate Court to show “why you should not be ejected from the premises.” If you want to tell your side of the story to a judge, call the Magistrate to set up a court date when you get a Rule to Vacate or Show Cause.

This document is an example of a Writ of Ejectment. This is the kind of document you would receive if the court officially ruled to evict you.

Q: Before being evicted, can a landlord kick me out and put my belongings outside my home? Turn off my utilities? Call the cops and remove me from the home?

NO!! The only time this can occur is if you have been evicted by the courts and do not move out of your rental unit within 24 hours. A landlord cannot do any of these things before the Writ of Ejectment is served or before the 24 hour move out period. If this happens, call a lawyer IMMEDIATELY. You can reach South Carolina Legal Services at 1-(888) 346-5592 and/or <https://sclegal.org/contact-us/>.

BE PREPARED: EVICTION DEFENSES

Here's what to know about different eviction situations that may arise.

Landlord evicted tenant with a “self-help” eviction

- A landlord cannot change the locks or shut off the utilities in order to force a tenant out of their home.
- The only way a landlord can evict a tenant is by filing a notice to vacate and going through the following proceedings in magistrate court. A tenant is not evicted until a judge signs over a writ to vacate.
- The only person who can legally remove a tenant from a rental unit is a law enforcement officer, following a writ signed by a judge.

Landlord did not give notice that tenant was violating the lease agreement

- If a landlord is filing a notice to vacate because a tenant violated the lease agreement, the landlord must give the tenant notice *in writing* 14 days before filing the lawsuit.
 - If there is no notice, the tenant can defend against the eviction by saying there was **no notice**.
 - ***Keep in mind:** In South Carolina, a landlord can give notice to evict for nonpayment of rent *within the terms of the lease agreement*.
 - A judge will stop an eviction if a tenant can show that the landlord did not give them notice 14 days prior to filing the lawsuit; however, this may only delay the eviction by starting the legal process over.

Landlord evicted tenant who paid rent in full

- A tenant has five days to pay rent after it is due. If the tenant pays in the five days but the landlord still attempts to proceed with the eviction, the tenant can use evidence that rent was paid as a defense to the eviction. **Always ask for a time stamped receipt on rent payments.**

Did the Landlord did not maintain the rental unit according to minimum legal standards?

Landlords must provide the following:

- Heating
- Electricity
- Water / Hot water. (*UNLESS the lease specifies that the heat or hot water are in the exclusive control of the tenant and supplied by a direct public utility connection.*)

If the landlord does not maintain these essential services, the tenant can:

- Contact SC Legal Services for legal assistance. Visit sclegal.org to apply for help online or call 1-(888) 346-5592.
- Arrange and pay for whatever services or repairs are needed and deduct the costs from the rent. (MAKE SURE to save all receipts from purchases, take pictures of damages and repairs. Keep everything in one place digitally as well as physically)
- Sue the landlord and recover damages
- Terminate the rental agreement and move out of the unit
 - Tenants MUST provide landlords with written notice before pursuing any of these options. The landlord has 14 days to make repairs.

Landlords must keep their properties in reasonably good and safe working order and condition, including electrical, gas, plumbing, sanitary, heating, ventilation, air conditioning, and other appliances supplied by them. (However, if the landlord does NOT supply it, the landlord is NOT responsible for it.)

If the landlord tries to evict the tenant for not paying rent, the tenant can use the landlord's failure to maintain the property as a defense to eviction.

- Similar to the above defenses, save all evidence of the landlord's failure to maintain the property. This defense is valid by law, but it requires consistent record and evidence keeping with time/date stamps.
- Per S.C. Code Ann. § 27-40-400, a landlord must:
 - Comply with all building codes that materially affect health and safety
 - Make repairs and do whatever is necessary to keep the premises fit and habitable
 - Keep common areas in a reasonably safe condition (and in a reasonably clean condition if the property contains more than four units)