CHAPTER 39

Rent

ARTICLE 1

General Provisions

**SECTION 27‑39‑10.** Collection of agricultural rents and advances; liens therefor not affected.

The remedy of distress given in Article 3 of this chapter shall not affect the right of a landlord to collect farm or agricultural rents by seizure or attachment of crops growing or gathered as provided by law, nor shall Chapters 33 through 41 of this Title affect liens for agricultural rents and for advances to agricultural tenants as otherwise provided by law.

HISTORY: 1962 Code Section 41‑3; 1952 Code Section 41‑3; 1946 (44) 2584.

CROSS REFERENCES

Agricultural liens, see Sections 29‑13‑10 et seq.

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 229(3), 246(2), 326.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1176 to 1178, 1186 to 1188, 1202, 1222, 1514 to 1516, 1522.

**SECTION 27‑39‑20.** Validity of payment of rent for period longer than twelve months.

Any payment made in anticipation of rent for a longer period than twelve months shall not be considered a valid discount against the claims and rights of third persons.

HISTORY: 1962 Code Section 41‑201; 1952 Code Section 41‑201; 1942 Code Section 8804; 1932 Code Sections 8804, 8875; Civ. C. ‘22 Section 5270; Civ. C. ‘12 Section 3500; Civ. C. ‘02 Section 2414; G. S. 1810; R. S. 1930; 1876 (16) 92.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Gentry v Recreation, Inc. (1939) 192 SC 429, 7 SE2d 63, 128 ALR 743. First Presbyterian Church of York v. York Depository (S.C. 1943) 203 S.C. 410, 27 S.E.2d 573.

**SECTION 27‑39‑30.** Effect of payment of rent to grantor or conusor.

No tenant shall be prejudiced or damaged by payment of any rent to any grantor or conusor or by breach of any condition for nonpayment of rent before notice shall be given to him of such grant by the conusee or grantee.

HISTORY: 1962 Code Section 41‑202; 1952 Code Section 41‑202; 1942 Code Section 8816; 1932 Code Section 8816; Civ. C. ‘22 Section 5282; Civ. C. ‘12 Section 3512; Civ. C. ‘02 Section 2426; G. S. 1823; R. S. 1942.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

**SECTION 27‑39‑40.** Action for debt may be brought for rent on lease or demise for life.

Any person having any rent in arrears or due upon any lease or demise for life or lives may bring an action of debt for such arrears of rent in the same manner as he might have done in case such rent were due and reserved upon a lease for years.

HISTORY: 1962 Code Section 41‑204; 1952 Code Section 41‑204; 1942 Code Section 8823; 1932 Code Section 8823; Civ. C. ‘22 Section 5289; Civ. C. ‘12 Section 3519; Civ. C. ‘02 Section 2433; G. S. 1827; R. S. 1946; 1898 (22) 784.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 217(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1094 to 1097.

**SECTION 27‑39‑60.** Counties and municipal corporations restricted from regulating rent charged for certain dwellings.

No county or municipal corporation may enact, maintain, or enforce any ordinance or resolution which would regulate in any way the amount of rent to be charged for privately owned, single family, or multiple unit residential, or commercial rental property. This section may not be construed as prohibiting any county or municipal corporation, or any authority created by a county or municipal corporation for that purpose, from regulating in any way property belonging to the county or municipal corporation or from entering into any agreements with private persons which regulate the amount of rent to be charged for rental properties.

HISTORY: 1985 Act No. 184, Section 1.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

ARTICLE 3

Collection of Rent by Distraint

**SECTION 27‑39‑210.** Commencement of proceedings for collection of rent by distress.

A landlord may enforce collection of rent due by distress in the following manner, to wit: Any magistrate having jurisdiction over the district in which the premises occupied are situate may issue, upon receipt of an affidavit of the landlord or his agent setting forth the amount of rent due, a notice directed to the tenant stating the alleged amount of rent due, including any cost, and fixing a time and place for a predistress hearing to be held not earlier than five days after the service of the notice. Such notice, together with a copy of the affidavit, shall be delivered to (a) any regular constable, (b) such special constable as the magistrate may appoint or (c) the sheriff of the county for enforcement. Such officer shall forthwith serve a copy of the notice and affidavit on the tenant by delivering the copies to him personally, or if he cannot be found, to any agent of the tenant in whose possession the property sought to be distrained is located. If neither the tenant nor any agent of the tenant can be found, the tenant may be served by leaving such copies at the tenant’s place of business or at the rented premises with some person of suitable age and discretion. If, after reasonable search, the tenant cannot be located in the county, no person can be found in possession of the rented premises, and the premises have been abandoned for a period of fifteen days or more immediately prior to the date of service, the copies of the affidavit and notice may be served by leaving them affixed to the most conspicuous part of the premises and by delivering them to the clerk of court of the county in which the premises are located. If the premises have been abandoned for fifteen days immediately prior to the date of service, the tenant shall be deemed to have appointed the clerk of court as his agent for acceptance of service of the notice and affidavit.

HISTORY: 1962 Code Section 41‑151; 1952 Code Section 41‑151; 1946 (44) 2584; 1973 (58) 384.

CROSS REFERENCES

Application in magistrate’s court for change of venue, see Section 22‑3‑920.

Executions on judgments of magistrates, see Section 22‑3‑310.

Inapplicability of this article to leases or rental agreements concerning real property insofar as it is inconsistent with the provisions of Chapter 40, Title 27, see Section 27‑40‑920.

New trials in magistrates’ courts, see Section 22‑3‑990.

Right of third party owner of distrained property to notice and opportunity to be heard prior to sale of such property, see Section 27‑39‑250.

Tenant’s defenses against issuance of a distress warrant, see Section 27‑40‑740.

Venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 270.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1283, 1286 to 1297, 1302 to 1316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 52, Nature of the Remedy and Prerequisites.

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

Forms

Am. Jur. Pl. & Pr. Forms Landlord and Tenant Section 131 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Is It Time to Reform Landlord Remedies in South Carolina? 34 S.C. L. Rev. 787 (1983).

Attorney General’s Opinions

A city recorder does not have jurisdiction to hear ejection and other proceedings under Section 22‑3‑10(10) Code of Laws of S.C. (1976). Magistrates have the jurisdiction to hear matters of landlord and tenants. 1978 Op. Atty Gen, No. 78‑32, p 49.

An automobile is subject to seizure and sale for rent under provisions of this chapter. 1967‑68 Op. Atty Gen, No. 2607, p 332.

Collection of rent by distraint on a tenant’s property, authorized by this chapter does not come within the authority conferred by Sections 15‑69‑180 and 22‑3‑1420. 1963‑64 Op. Atty Gen, No. 1720, p 196.

Richland County magistrates have county‑wide jurisdiction for collection of rent by distress under this section. 1963‑64 Op. Atty Gen, No. 1623, p 45.

NOTES OF DECISIONS

In general 1

Acquiring lien by levy under distress warrant 6

Nature of remedy 2

Other remedies 3

Priority of competing claims 7

When claim and delivery action is proper 5

When distress will lie 4

1. In general

While the landlord has no lien on the personal property, this section preserves to him his right to distrain on such property for the collection of rent due. Burnett v Boukedes (1962) 240 SC 144, 125 SE2d 10. Frady v Smith (1966) 247 SC 353, 147 SE2d 412.

The right of a landlord to distrain ordinarily does not create a lien. Burnett v Boukedes (1962) 240 SC 144, 125 SE2d 10. Frady v Smith (1966) 247 SC 353, 147 SE2d 412.

At common law a landlord had no lien upon the personal property of his tenant merely by the relationship but he did have the right of distress for rent in arrears whereby he could seize whatever movables he found on the premises and hold them until rent was paid. Burnett v. Boukedes (S.C. 1962) 240 S.C. 144, 125 S.E.2d 10.

2. Nature of remedy

The right of the landlord to distrain is subject to the following conditions: (1) Distress must be for rent only; (2) when the relation of landlord and tenant exists; (3) when the rent reserved is certain; (4) when the rent is in arrears; and (5) when the property belongs to the tenant in his own right. Burnett v Boukedes (1962) 240 SC 144, 125 SE2d 10. Frady v Smith (1966) 247 SC 353, 147 SE2d 412.

This remedy is cumulative to the agricultural lien law. Sullivan v Ellison (1884) 20 SC 481. Parrott v Malpass (1897) 49 SC 4, 26 SE 884.

3. Other remedies

Regardless of the applicability of Sections 29‑15‑10 and 27‑39‑210, lessees of storage space could not recover for losses sustained by lessor’s public sale of their property, after notice, where the action of the lessors was clearly authorized by the lease. Pinckney v. Pettijohn Builders, Inc. (S.C.App. 1986) 289 S.C. 405, 346 S.E.2d 533.

Section 27‑39‑210, commonly known as the Collection of Rent by Distraint Statute, does not provide the exclusive remedy to a landlord for the collection of rent. Pinckney v. Pettijohn Builders, Inc. (S.C.App. 1986) 289 S.C. 405, 346 S.E.2d 533. Landlord And Tenant 1531

4. When distress will lie

If rent is payable in cotton, it is rent certain and subject to distress. Fraser v Davie (1851) 39 SCL 59. Huff v Latimer (1890) 33 SC 255, 11 SE 758.

No distress will lie until rent is due. Bailey v Wright (1826) 14 SCL 484. O’Farrell v Nance (1834) 20 SCL 484. Lander v Ware (1846) 32 SCL 15.

No distress will lie except for rent expressly reserved. Jacks v Smith (1793) 1 SCL 315. Smith v Sheriff (1795) 1 SCL 443. Marshall v Giles (1814) 5 SCL 488. Reeves v McKenzie (1830) 17 SCL 497.

Distress for future rent due under an acceleration clause in the lease. Gentry v. Recreation, Inc. (S.C. 1940) 192 S.C. 429, 7 S.E.2d 63, 128 A.L.R. 743.

One tenant in common may distrain for rent due by his cotenant. Luther v. Arnold (S.C. 1854) 8 Rich. 24, 62 Am.Dec. 422. Tenancy In Common 28(1)

Lien of distress on goods replevied is never lost. Harris v. Clayton (S.C. 1841).

Rent need not be reserved eo nomine. Price v. Limehouse (S.C. 1828).

5. When claim and delivery action is proper

If landlord issues a valid distress warrant against his tenant for the past‑due rent and attempts to levy upon property while the same is upon the leased premises or within ten days (now thirty days) after its removal therefrom, and if the tenant refuses to permit such levy to be made or to surrender the possession of the property pursuant to such distress warrant then it is a proper procedure for the landlord to institute a claim and delivery action to determine the landlord’s right to the possession of such property. Burnett v. Boukedes (S.C. 1962) 240 S.C. 144, 125 S.E.2d 10. Landlord And Tenant 1627

Where landlord has no right to distrain for the rent in arrears, he has no right to proceed under claim and delivery for the purpose of obtaining possession of property. Burnett v. Boukedes (S.C. 1962) 240 S.C. 144, 125 S.E.2d 10. Landlord And Tenant 1604

6. Acquiring lien by levy under distress warrant

A lien can only be acquired by an actual levy under a distress warrant made in conformity with the provision of the statute governing the same. Burnett v Boukedes (1962) 240 SC 144, 125 SE2d 10. Frady v Smith (1966) 247 SC 353, 147 SE2d 412.

Goods must be on the leased premises, see Burnett v Boukedes (1962) 240 SC 144, 125 SE2d 10. Frady v Smith (1966) 247 SC 353, 147 SE2d 412.

The only way by which a landlord can obtain and perfect a lien for rent on the property of a tenant is by a distress warrant levied on the property liable for the rent while it is on the leased premises, or within ten days (now thirty days) after its removal therefrom. Burnett v. Boukedes (S.C. 1962) 240 S.C. 144, 125 S.E.2d 10.

If the goods have been removed from such premises, what is now Section 27‑39‑270 is applicable. Burnett v. Boukedes (S.C. 1962) 240 S.C. 144, 125 S.E.2d 10.

Until a lien is thus obtained, the landlord’s right thereto is inchoate. Burnett v. Boukedes (S.C. 1962) 240 S.C. 144, 125 S.E.2d 10. Landlord And Tenant 1701

7. Priority of competing claims

Where landlord had a lien other than a mortgage, pledge or judgment lien, in this case a distress lien, such lien was afforded no protection by 26 USCA Section 3672; and where a government lien for taxes had attached long before the landlord obtained a distress warrant, the government’s lien has priority over the distress lien. U.S. v. Scovil (U.S.S.C. 1955) 75 S.Ct. 244, 348 U.S. 218, 99 L.Ed. 271.

For purposes of Uniform Commercial Code (UCC) priority rules, a landlord does not become a lien creditor until it levies for distress. In re J.M. Smith Corp. (S.C. 2000) 341 S.C. 442, 535 S.E.2d 131, rehearing denied. Secured Transactions 144

Priority of mortgage lien and that of distress for rent involves question of legal notice under the recording statutes, and such priority will not be determined by equities between parties but upon express statutory enactments. Haverty Furniture Co., Inc. of Charleston v. Worthy (S.C. 1962) 241 S.C. 369, 128 S.E.2d 707.

**SECTION 27‑39‑220.** Predistress hearing.

The purpose of the predistress hearing is to protect the tenant’s use and possession of property from arbitrary encroachment and to prevent unfair or mistaken deprivation of property. If the magistrate shall, after conducting the hearing, find that the landlord’s right to distress is valid and the tenant has no overriding right to continue in possession of the property subject to distress, then the magistrate may issue his distress warrant naming the amount of rent due, with costs, and such warrant shall be delivered to an officer as set forth in Section 27‑39‑210.

HISTORY: 1962 Code Section 41‑151.1; 1973 (58) 384.

CROSS REFERENCES

Right of third party owner of distrained property to notice and opportunity to be heard prior to sale of such property, see Section 27‑39‑250.

Venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 263, 270(0.5).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1274, 1284 to 1285, 1300.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

**SECTION 27‑39‑230.** Property exempt from distress.

The following property is exempt from distress for rent:

(1) personal clothing and food within the dwelling;

(2) bedsteads;

(3) bedding and cooking utensils; and

(4) property which is owned by a third party for which the magistrate finds ownership was not transferred from the tenant to the third party for the purpose of avoiding distraint.

HISTORY: 1962 Code Section 41‑152; 1952 Code Section 41‑152; 1946 (44) 2584; 2000 Act No. 409, Section 3.

CROSS REFERENCES

Applicability of this exemption to provision that all property on rented premises is subject to distress, see Section 27‑39‑250.

Effect of abandonment of premises by tenant, see Section 27‑35‑150.

Tenant’s defenses against issuance of a distress warrant, see Section 27‑40‑740.

Venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 269(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1283, 1316.

NOTES OF DECISIONS

In general 1

1. In general

Question of whether general exemption statute (Section 15‑41‑200) applies to distress proceedings under Sections 27‑39‑210 et seq. is rendered moot when tenant settles distress case by paying rent and accepting return of goods which have been distrained. Howard v. Bibbs (S.C.App. 1986) 287 S.C. 636, 340 S.E.2d 566.

Cited in Thompson v. Rutland (S.C. 1954) 225 S.C. 485, 83 S.E.2d 163.

**SECTION 27‑39‑240.** Enforcement of distress warrant.

The officer to whom a distress warrant is delivered, after the predistress hearing, shall forthwith demand of the tenant payment of the rent with costs as enumerated in the distress warrant. If such amount is paid the officer shall return the warrant with the amount collected to the magistrate who shall settle with the landlord. If the tenant fails or refuses to pay such rent with costs the officer shall distrain sufficient of the property upon the rented premises to pay such amount, giving the tenant a list in writing of the property distrained together with a copy of the distress warrant.

HISTORY: 1962 Code Section 41‑153; 1952 Code Section 41‑153; 1946 (44) 2584; 1973 (58) 384.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 270(7).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1286, 1290, 1316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

Attorney General’s Opinions

A sheriff or his deputy does not have the authority to break and enter a house, after request and refusal, to distrain sufficient property upon the rented premises to pay rent and costs under the authority of a distress warrant. 1979 Op. Atty Gen, No 79‑7, p 13.

Upon application for a distress warrant and after preseizure hearing, it is lawful for a landlord to distress for rent against the property contained within a mobile home placed upon rented space. 1974‑75 Op. Atty Gen, No. 3945, p 22.

NOTES OF DECISIONS

In general 1

1. In general

Stated in U.S. v. Scovil (U.S.S.C. 1955) 75 S.Ct. 244, 348 U.S. 218, 99 L.Ed. 271.

Items not listed on list of property distrained are not legally distrained and need not be considered at hearing to determine whether all distrained items have been returned in accordance with accord and satisfaction. Howard v. Bibbs (S.C.App. 1986) 287 S.C. 636, 340 S.E.2d 566.

**SECTION 27‑39‑250.** Property of third party on premises.

If any property distrained is not the property of the tenant, the tenant shall immediately name the owner and inform the officer of the ownership, and the officer shall distrain sufficient other property of the tenant to pay the rent and costs. Even though property of the tenant must be first applied to payment of the rent and costs, all property upon the rented premises is subject to distress as provided in this section, except property mentioned in Section 27‑39‑230. If at any time prior to sale, as provided in Section 27‑39‑320, the landlord is given or receives written notice containing facts substantiating ownership that some of the distrained property is owned by a third party, the third party must receive notice, as provided in Section 27‑39‑210 , and an opportunity to be heard, as provided in Section 27‑39‑220. Before the distrained property of the third party is subject to sale pursuant to Section 27‑39‑320, the magistrate shall find, in a hearing, that the ownership of the property was transferred from the tenant to the third party for the purpose of avoiding distraint. If the magistrate does not make this finding, the property of the third party is exempt from distraint as provided in Section 27‑39‑230.

HISTORY: 1962 Code Section 41‑154; 1952 Code Section 41‑154; 1946 (44) 2584; 1985 Act No. 85, Section 1; 2000 Act No. 409, Section 4.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 269(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1283, 1316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

S.C. Jur. Landlord and Tenant Section 54, Distress Under the Rlta.

LAW REVIEW AND JOURNAL COMMENTARIES

Note, Third‑party lessors and bailors beware: South Carolina distraint statute threatens due process, 49 S.C. L. Rev. 1259, Summer 1998.

NOTES OF DECISIONS

In general 2

Validity 1

1. Validity

Section 27‑39‑250, [prior to amendment in 1985] relating to distraint of a tenant’s property for non‑payment of rent, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, insofar as it allows seizure and sale of property found on a tenant’s premises but owned by a third person, without giving such third person notice or an opportunity to be heard, either prior to or subsequent to the seizure of such property. Pettigrew v. Womble (D.C.S.C. 1984) 589 F.Supp. 242.

Distraint of third‑party property pursuant to statute allowing distraint of personal property for rent does not violate substantive due process, as statute requires notice and opportunity to be heard before distrained property of third party is subject to sale. Tolemac, Inc. v. United Trading, Inc. (S.C. 1997) 326 S.C. 103, 484 S.E.2d 593. Constitutional Law 4485; Landlord And Tenant 1662

2. In general

Statute allowing distraint of personal property for rent allowed distraint of third‑party property located on rented premises; overruling Frady v. Smith, 247 S.C. 353, 147 SE2d 412. Tolemac, Inc. v. United Trading (1997, SC) 484 SE2d 593.

Landlord’s statutory distress power was not limited by existence of perfected security interest in distressed property, and secured party sat in same posture as third party holding unencumbered complete ownership of property, whose property would be subject to distraint if it were located on premises and tenant’s own property did not satisfy rent. Ex parte J.M. Smith (S.C.App. 1998) 330 S.C. 479, 498 S.E.2d 908, rehearing denied, certiorari granted, reversed 341 S.C. 442, 535 S.E.2d 131. Landlord And Tenant 1675

**SECTION 27‑39‑270.** Property removed from premises.

Any property belonging to the tenant removed from the premises shall, if found, be subject to distraint and sale, provided such distraint be made within thirty days after such removal.

HISTORY: 1962 Code Section 41‑156; 1952 Code Section 41‑156; 1946 (44) 2584; 1960 (51) 1602.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 269(5).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1283.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

**SECTION 27‑39‑280.** Distraint after expiration of lease of tenant for life of another.

When tenants pur autre vie hold over the tenements to them demised after the determination of such leases, any person having any rent in arrears or due upon any such lease may distrain for such arrears after the determination of the lease, in the same manner as he might have done if such lease had not been ended or determined; provided, that such distress be made within the space of six calendar months after the determination of such lease during the continuance of such landlord’s title or interest and during the possession of the tenant from whom such arrears became due.

HISTORY: 1962 Code Section 41‑157; 1952 Code Section 41‑157; 1942 Code Section 8821; 1932 Code Section 8821; Civ. C. ‘22 Section 5287; Civ. C. ‘12 Section 3517; Civ. C. ‘02 Section 2431; G. S. 1828; R. S. 1947; 1898 (22) 784; 1946 (44) 2584.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 265(1), 268.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1275 to 1279, 1282.

NOTES OF DECISIONS

In general 1

1. In general

Where the rent was due at expiration of lease and tenant held over, landlord, under this section, had six months thereafter in which to levy distress. Williams v. Wolfe (S.C. 1925) 130 S.C. 227, 126 S.E. 41.

**SECTION 27‑39‑290.** Reasonableness of distress.

Any distress must be reasonable in respect to the amount of property distrained.

HISTORY: 1962 Code Section 41‑158; 1952 Code Section 41‑158; 1946 (44) 2584.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 269(1).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1283, 1316.

NOTES OF DECISIONS

In general 1

1. In general

Stated in U.S. v. Scovil (U.S.S.C. 1955) 75 S.Ct. 244, 348 U.S. 218, 99 L.Ed. 271.

**SECTION 27‑39‑300.** Damages for unreasonable and excessive distress.

Any lessor or landlord who makes unreasonable and excessive distress shall be liable for all damages sustained by the tenant whose goods are distrained by reason of such excessive distress. Such damage may be recovered by an action in any court of competent jurisdiction.

HISTORY: 1962 Code Section 41‑159; 1952 Code Section 41‑159; 1942 Code Section 8824; 1932 Code Section 8824; Civ. C. ‘22 Section 5290; Civ. C. ‘12 Section 3520; Civ. C. ‘02 Section 2434; G. S. 1827; R. S. 1946; 1898 (22) 784.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 274(7).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1317 to 1321.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

NOTES OF DECISIONS

In general 1

1. In general

Stated in U.S. v. Scovil (U.S.S.C. 1955) 75 S.Ct. 244, 348 U.S. 218, 99 L.Ed. 271.

That the sum named in the distress warrant to be owing as rent was $50.50, whereas in claim and delivery the amount was alleged to be $35.10, there having been an honest mistake in stating the amount of rent in the warrant, does not, under this section, defeat the landlord’s lien for rent and thus deprive him of the right of possession of the property levied on under the distress warrant. The tenants cannot complain, since the reduction was favorable to them. Nash v. Oliver (S.C. 1928) 144 S.C. 386, 142 S.E. 514.

Evidence in an action under this section for actual and punitive damages for an excessive distress for rent, made by defendant on plaintiff’s goods, is sufficient to authorize submitting to the jury whether defendant acted in reckless disregard of plaintiff’s rights. Cannon v. Cox (S.C. 1914) 98 S.C. 185, 82 S.E. 399. Landlord And Tenant 1719

A substantially excessive distress being necessarily an unreasonable one within this section, a charge submitting to the jury the question whether the distress was unreasonable—that is, whether the amount of property seized to pay eighty dollars was excessive—was not erroneous in not submitting the question whether it was unreasonable and excessive, the word “excessive” being undoubtedly used in the charge in the sense of substantially excessive. Alexander v. Able (S.C. 1911) 88 S.C. 368, 70 S.E. 1009.

**SECTION 27‑39‑310.** Giving bond to free property from distraint.

Within five days after such distraint the tenant may free the property from the lien of the distraint by giving a bond payable to the landlord in double the amount claimed, with sufficient surety or sureties approved by the court, and the issues thus joined shall be tried by the court. The landlord shall have the right to except to the surety or sureties and the surety or sureties shall justify before the magistrate as provided for justification for sureties in claim and delivery actions.

HISTORY: 1962 Code Section 41‑160; 1952 Code Section 41‑160; 1946 (44) 2584.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 270(10).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1297.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

NOTES OF DECISIONS

In general 1

1. In general

Stated in U.S. v. Scovil (U.S.S.C. 1955) 75 S.Ct. 244, 348 U.S. 218, 99 L.Ed. 271.

**SECTION 27‑39‑320.** Sale of distrained property.

If the tenant fails to give bond as above prescribed then the officer may sell such property at public auction to the highest bidder for cash at a designated place of sale after posting a notice of such sale for five days upon the premises and two other public places in the county stating the time and place of such sale.

HISTORY: 1962 Code Section 41‑161; 1952 Code Section 41‑161; 1946 (44) 2584.

CROSS REFERENCES

Right of third party owner of distrained property to notice and opportunity to be heard prior to sale of such property, see Section 27‑39‑250.

Venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 272.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1298.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

Attorney General’s Opinions

Section 27‑39‑320 is the appropriate statute to determine property exempt from distraint. 1983 Op. Atty Gen, No. 83‑95, p. 161.

A magistrate’s constable is authorized to conduct sales as to distrained property and as to property attached which result from actions initiated in a magistrate’s court but is not authorized to conduct a sale to enforce a mechanic’s lien. While apparently there is authority for a magistrate’s constable to conduct a sale to satisfy a judgment rendered in a magistrate’s court, the preferred procedure is to have a sheriff conduct a sale resulting from such a judgment. 1979 Op. Atty Gen, No. 79‑81, p 107.

**SECTION 27‑39‑330.** Tax liens on property sold under distress.

The purchaser at a sale of chattels seized under a distress warrant shall take the property subject to any lien for taxes thereon.

HISTORY: 1962 Code Section 41‑162; 1952 Code Section 41‑162; 1946 (44) 2584.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 271, 272.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1298 to 1299.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

**SECTION 27‑39‑340.** Persons who may be purchasers at sale.

The landlord or any other person may become a purchaser at a sale of chattels under a distress warrant.

HISTORY: 1962 Code Section 41‑163; 1952 Code Section 41‑163; 1946 (44) 2584.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 272.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1298.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

**SECTION 27‑39‑350.** Disposition of proceeds from sale.

If the property distrained brings more than the rent with costs at such sale the surplus shall be paid to the tenant, and the rent shall be paid to the landlord.

HISTORY: 1962 Code Section 41‑164; 1952 Code Section 41‑164; 1946 (44) 2584.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 272.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1298.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 53, The Statutory Procedure.

**SECTION 27‑39‑360.** Remedy of distress deemed cumulative.

The remedy of distress shall be deemed cumulative with respect to any other remedy for the collection of rent.

HISTORY: 1962 Code Section 41‑165; 1952 Code Section 41‑165; 1946 (44) 2584.

Cross References

As to venue in matters involving landlord and tenant, see Section 15‑7‑10.

Library References

Landlord and Tenant 263.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant Sections 1272, 1274, 1284 to 1285, 1300.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Landlord and Tenant Section 52, Nature of the Remedy and Prerequisites.