

The South Carolina Court of Appeals

Walden at Dorchester LLC, the Legends of Charleston
Park, Respondent,

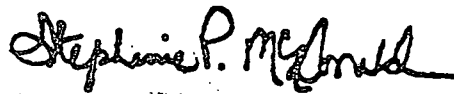
v.

Creighton Montgomery, Appellant.

Appellate Case No. 2018-000367

ORDER

Appellant has filed a motion asking this court to stay the execution of his ejection. Appellant failed to provide proof of compliance with the magistrate court's undertaking and order staying execution pursuant to section 27-40-800 of the South Carolina Code (2007); however, he alleges he attempted to satisfy the undertaking but was not given five days to do so as provided by section 27-40-800(e). Accordingly, we grant a temporary stay for seven days and remand to the circuit court for a determination of whether Appellant was afforded the proper amount of time to make payment or denied the ability to satisfy the undertaking.



FOR THE COURT

Columbia, South Carolina

cc: Creighton Montgomery
Walden at Dorchester LLC
Sandy Ferguson

FILED

March 2, 2018 5:5

Code of Laws of South Carolina 1976 Annotated
Title 27. Property and Conveyances (Refs & Annos)
Chapter 40. Residential Landlord and Tenant Act (Refs & Annos)
Article 7. Remedies
Subarticle II. Landlord Remedies

Code 1976 § 27-40-800

§ 27-40-800. Undertaking on appeal and order staying execution.

Currentness

(a) Upon appeal to the circuit court, the case must be heard, in a manner consistent with other appeals from magistrates' court, as soon as is feasible after the appeal is docketed.

(b) It is sufficient to stay execution of a judgment for ejectment that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by the magistrate in accordance with § 27-40-780, as it becomes due periodically after the judgment was entered. Any magistrate, clerk, or circuit court judge shall order a stay of execution upon the undertaking.

(c) The undertaking by the tenant and the order staying execution may be substantially in the following form:

State of South Carolina

County of _____

_____ Landlord

vs.

_____ Tenant

Bond to Stay

Execution on Appeal

to Circuit Court

Now comes the tenant in the above entitled action and respectfully shows the court that a judgment of ejectment was issued against the tenant and for the landlord on the ___ day of _____, 19__, by the magistrate. Tenant has appealed the judgment to the circuit court.

Pursuant to the findings of the magistrate, the tenant is obligated to pay rent in the amount of \$_____ per _____, due on the ___ day of each _____.

Tenant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the court and moves the circuit court to stay execution on the judgment for ejection until this matter is heard on appeal and decided by the circuit court.

This the _____ day of _____, 19____

.....

Tenant

Upon execution of the above bond, execution on the judgment of ejection is hereby stayed until the action is heard on appeal and decided by the circuit court. If tenant fails to make any rental payment within five days of the due date, upon application of the landlord, the stay of execution shall dissolve, the appeal by the tenant to the circuit court on issues dealing with possession must be dismissed and the sheriff may dispossess the tenant.

This the _____ day of _____, 19____

.....

Judge

(d) If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the circuit court. Upon the motion and upon notice to all interested parties, the court shall hold a hearing as soon as is feasible after the filing of the motion and determine what modifications, if any, are appropriate. No judgment for ejection may be executed pending a hearing on the motion, provided the tenant complied with the terms of the undertaking.

(e) If the tenant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the landlord, shall issue a warrant of ejection to be executed pursuant to § 27-37-40 of the 1976 Code.

(f)(1) Upon appeal to the Supreme Court or to the court of appeals, it is sufficient to stay execution of a judgment for ejection that the tenant sign an undertaking that he will pay to the landlord the amount of rent, determined by order of the judge of the circuit court, as it becomes due periodically after judgment was entered. The judge of the court having jurisdiction shall order stay of execution upon the undertaking.

(2) The tenant's failure to comply with the terms of the undertaking entitles the landlord to execution of the judgment for possession in accordance with the provisions of subsection (e) of this section.

Credits

HISTORY: 1986 Act No. 336, § 1; 1999 Act No. 55, § 34.

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Code 1976 § 27-40-800, SC ST § 27-40-800

Current through 2018 Act No. 130; subject to technical revisions by the Code Commissioner as authorized by law before official publication.

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