
KANSAS TENANTS HANDBOOK

Written and Produced by

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FOREWORD

As we commence Housing and Credit Counseling, Inc.'s 35th year, we are proud to bring you the 4th Edition 6th Revision of our **Kansas Tenants Handbook**. In addition to making a few clarifications and updates in the text, we have also included new information in response to frequently asked questions and changes in local, state and federal laws.

Many people assisted with our revisions to this **Kansas Tenants Handbook** as well as our **Kansas Landlords Handbook**. This time, kudos especially go to Louise Kirkpatrick, who carefully examined and reconsidered every word, wrote and kept, wrote and discarded...and who patiently, and without complaint, answered my questions, defended proposed changes, did more research... and overall took the lead to hammer and rework this book. Louise also spent the two years leading up to this handbook revision updating HCCI's various notices, developing the new 14/30-day noncompliance notices, and more. Great job, Louise! Heartfelt thanks also go to Jonell Passariello, who has done the final layout and word processing on this handbook ever since we had the capacity to do it ourselves. What could we ever do without you!

Housing and Credit Counseling, Inc. Staff: Robert Baker and Debbie Eubanks for their review and comments.

Special Thanks: A special thanks to the Kansas Bar Association, Topeka, Kansas, for contributing the printing of this handbook. In particular, thanks to Meg Wickham, Public Services Director, for handling all of the arrangements.

We hope this Handbook continues to be as useful to you, and the people with whom you share it, as our previous publications have been.

Enjoy!

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Housing and Credit Counseling, Inc.
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Material in this book is dated. If this Kansas Tenants Handbook is more than a couple of years old, you may want to double-check your information with an attorney, local housing counseling center, or contact Housing and Credit Counseling, Inc. for information and/or the newest edition.

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References in the text and at the end of this book generally refer to Kansas Statutes Annotated (K.S.A.). These laws may be found at most libraries, many businesses, and government offices. Kansas Statutes and many local ordinances are available on the Internet. For state statutes, go to www.kslegislature.org. Do a statute search using the numbers listed in this handbook. Copies of the Kansas Residential Landlord and Tenant Act, Kansas Mobile Home Parks Residential Landlord and Tenant Act, rent escrow ordinances, sample forms, and relevant court cases may be purchased from HCCI, 1195 SW Buchanan, Topeka, KS, 66604 or ordered by phone, mail, or from HCCI’s website www.hcci-ks.org.

This handbook was produced in accordance with Kansas Residential Landlord and Tenant Act (KRLTA)

THIS HANDBOOK AND THE KRLTA COVER THE FOLLOWING:

TENANT is defined as a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

LANDLORD is defined as the owner, lessor or sublessor of the dwelling unit, or the building of which it is a part, and it also means a manager of the premises.

OWNER is defined as one or more persons, jointly or severally, in whom is vested: (1) all or part of the legal title to property or (2) all or part of the beneficial ownership and a right to prevent use and enjoyment of the premises.

PERSON includes an individual or organization.

ORGANIZATION includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

THIS HANDBOOK AND THE KRLTA DO NOT COVER:

- **COMMERCIAL** rental agreements.
- The following Residential rental agreements:
 - a) Residence at an **INSTITUTION**, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
 - b) 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 the purchaser's interest;
 - c) Occupancy by a member of a **FRATERNAL OR SOCIAL ORGANIZATION** in the portion of a structure operated for the benefit of the organization;
 - d) **TRANSIENT** occupancy in a hotel, motel, or rooming house;
 - e) Occupancy by an **EMPLOYEE** of a landlord whose right to occupancy is conditional upon employment in and about the premises;
 - f) Occupancy by an owner of a **CONDOMINIUM** unit or holder of a proprietary lease in a **COOPERATIVE**; and
 - g) Occupancy under a rental agreement covering premises used by the occupant primarily for **AGRICULTURAL** purposes.

BEFORE YOU RENT



So, you've decided to rent. **LOOK BEFORE YOU LEAP!** What you do *before* you put any money down or sign any paper could be more valuable than anything you do after you enter into a new rental relationship. **TAKE YOUR TIME AND BE THOROUGH!**

START YOUR RENTAL FILE NOW!

A rental agreement is a business contract, so **KEEP RECORDS!** Remember, these forms have your personal information on them, so they should be kept together and in a secure place. You may use a large envelope, a file folder, or a more formal system. You will want to have a copy of any lease agreement, move-in checklist, inspections, maintenance requests, notices, special agreements, and/or forms you sign. You should request and keep receipts for all payments you make whether you pay by money order, cashier's check, personal check, cash, credit, debit, or online.

WHAT DO YOU NEED?

It goes without saying that people have to balance what they need vs. what's available. Before you start looking for a place, hopefully you've asked yourself (and answered) the following questions:

A. Where? Is the place quiet enough? Is it too quiet? Will I be close enough to work? Church? Is it near a bus line? Stores? Do I feel safe there? If I have a family, is it close to schools? Play space and recreation?

B. Does it match who I am? If I'm elderly, does it have too many steps? If I am young and entertain a lot, will I be able to do it? Can I plant a garden? If I like to work on my car, can I? Is there a garage or off-street parking? Can I have a pet? Take the time to think about your needs and wants before you start looking.

C. How much does it cost? It's generally recommended that you should not spend more than 30 – 40% of your monthly income on total housing cost, which means rent plus utilities. For people on limited incomes, this is often very hard to do. Things that are important to consider include what utilities you will be responsible for and whether there are other costs you'll need to figure in. Your landlord or your local utility companies should be able to tell you what utility usage and costs have been for the past couple of years. Are you responsible for cutting the lawn? If you are, and the landlord won't provide the mower, maybe you'll have to pay somebody to do it. You may have move-in expenses such as utility deposits, truck rental, and furniture and drapery purchases. Sometimes two people decide to rent a place together. You both should be sure of what happens if one of you decides to move out! You may be stuck paying everything if your roommate moves and you can't find someone else to share the cost.

D. How long do I want to live there? This question comes up when it's time to decide on a lease. If you think you might be moving, getting married or getting divorced, or if there is any uncertainty in your life which might make for a questionable length of stay, think twice about signing a long-term lease. You may want a written agreement but on a month-to-month basis. Everyone should check to see what provision there is for breaking a lease, if the need arises. Don't just accept a verbal promise of, "We can work it out if something happens." Know what it is, and have it in writing. If the terms aren't right, don't move in!

FINDING A PLACE

Once you've answered all these questions, it's time to find a place. The most common way is to check the newspaper or on the internet. Sometimes people post notices on public bulletin

boards in stores and laundromats or on websites. Real estate companies manage rental properties; you can call or check the websites of the ones listed in your phone book and ask them. If there's a neighborhood you particularly want to live in, it may be worthwhile to drive through it and see if there are any "For Rent" signs. If you see a place that looks vacant, but there's no sign, you can call or check with the County Clerk or County Appraiser's website to see who pays the taxes at that address and then contact them directly.

Housing is often rented by word of mouth. Plan ahead and let people know you're looking well in advance.

You could contact the local Landlord organization or association. These exist in many Kansas communities as both formal and informal groups. Some organizations may consist largely of the "Mom and Pop" landlords, persons who own and manage their own rental properties. For some, the rental business provides retirement income, for some it is a full-time job, and for many, it is a part-time activity in addition to a full-time job. Conversely, many large complexes are owned by corporations and the rental business is run by hired management. This can be important information for you when you are looking for a place to rent.

If you have anything in your rental or credit history that might keep you from qualifying to rent, the Mom and Pop landlords may represent your best chance for securing housing. The property owner can choose to be more flexible with his screening standards whereas a hired manager may not have that freedom. You can meet the landlord or property owner and present your case. If he or she accepts you as a tenant, you should be sure to live up to your promises.

Be wary if a place is for sale. Check out whether it is likely to remain a rental after sale. Be extra careful by having arrangements for showing the property to potential buyers in writing. If someone promises to take a property off the market because you have moved in, get that in writing too.

Don't accept a substandard place with promises that "it will be fixed." Get it in writing: what will be done? How soon? The Landlord is supposed to deliver a rental unit in compliance with your lease agreement, state law, and local codes. However, some judges have said that the Tenant is responsible to look out for himself and should not move into a place he can see is not ready to be lived in and that may be unsafe or unhealthy.

Look around and try to find what you want. Don't just settle on a place because you're out of time. You may regret it later.

CHECKING IT OUT

(1) Check the hallways and stairs. Are they lit at night? Are stairs wobbly or broken? Will you feel secure passing through the halls at night? Are they reasonably clean and in good repair?

(2) Check the locks on the doors. If there are no dead-bolt locks, you might want to request they be installed. What about fire exits? Does the building have security doors? Do they close and lock properly?

(3) Check the plumbing, including pipes around radiators. Are there any leaks? Test everything. Run the hot and cold water in all sinks, bathtubs, and showers. Flush the toilet. Examine all fixtures in the bathroom for leaks. Does the water drain freely? Is the hot water hot? How long did it take to get hot? Open cabinet doors and look under sinks. Are there drips, standing water, musty smell, and/or water stains? (Doing this might make you feel kind of silly, but when do you want to find out, now or later?)

(4) Check the electrical wiring. Look for exposed wires and frayed wiring. Are there outlets and are they where you will need them? Be sure there is enough electricity coming into the rental unit to run all the appliances you will want to use. If you have a 220 volt air conditioner, dryer,

or stove, check to see if there are outlets available. If not, you will want a written agreement with the landlord about whether appropriate outlets can be installed and who will pay.

(5) Check the floor, walls, and ceilings. Make sure there are no holes, cracks, or broken plaster. Look for spots or streaks on the ceilings and walls. They may mean rain water or water from pipes above is leaking through. Carefully examine basement apartments. They are more prone to bugs, water leakage, and mold.

(6) Look for signs of rodents and insects. Check for droppings in cupboards and corners of the kitchen and bathrooms. Go to the place at night and flip the lights on to see if bugs go scurrying. Ask the landlord if he or she sprays regularly. Shredded paper often means rats or mice are nesting nearby.

(7) Check the heat. It is advisable to have a way to control the heat within each dwelling unit (thermostat or controls on radiators or heating vents). Find out if circulation is adequate to heat all rooms. If you are worried about whether the heater is safe, you can get a professional to come out and inspect the unit. (There may be a fee.) If you are renting during the summer, you might ask other tenants in the building about the heat in the winter.

(8) Ask about utilities. Who pays for water? Gas? Electricity? You may find apartments where some or all utilities are included in the rent. If they are not included, be sure to figure these expenses into the monthly total that you will be paying. The local gas and electric companies can tell you how much the bills have been for the previous twelve months. This will give you an idea of what to expect if you move in. You will probably have to pay deposits to utility companies, including the phone company, before they will connect your services.

Occasionally, and most often in older, single-family dwellings which have been converted to apartments, there is only one utility connection. Beware of such an arrangement if you are

required to have the utilities in your name. When you rent the apartment and get the utilities turned on, you do not want to find yourself billed for the whole house!

Sometimes the landlord contracts for the utilities and then bills the tenants for their share in addition to rent. Kansas law addresses situations in which the landlord pays for water supplied through a master meter, then bills tenants based on usage to individual meters. If you will pay the landlord for water or other utilities, be sure to ask how the bill will be figured and when you will be expected to pay. This information should be in writing.

(9) Check for garbage or trash containers. Where are they? Is the area well kept? Is the landlord responsible for maintaining the containers and seeing that the trash is picked up?

(10) Do the appliances work? Check those that are provided (for example, stove or refrigerator). Do they possess all their parts (broiler pans, oven racks, shelves, drawers, etc.)?

(11) Check the windows and screens. Are they broken? Do they open? Do they lock? Are there storm windows?

(12) Check for lead paint. If the building was built before 1978, chances are good that there is lead-based paint. If the paint is peeling or flaking, there is a danger to young children. The taste of lead paint is sweet and children will eat it like candy. It can get into the air when repair work or sanding is done. If you have young children, do not move into a place that has exposed lead paint.

(13) If a rental unit is furnished, check exactly what is there and what condition it is in.

14) Exactly what are you renting? Is there any part of the rental property that you cannot use (for example: storage shed, garage, basement, etc.)? If an advertising brochure shows a pool and playground but you don't see them, ask, don't assume!

(15) Find out who is expected to take care of the yard, halls, and sidewalks (mowing, scooping snow, cleaning, etc.).

(16) Is parking available and/or guaranteed? Is the number of vehicles limited to one? Two?

(17) Is there a lease? If so, get a copy. Take it home and look it over. Ask someone to help you if you don't understand it. If the landlord doesn't have one and you want one, now is the time to mention it and suggest a model.

(18) Ask about "house rules." Rules and regulations are enforceable by the landlord as long as they are reasonable, applicable to all tenants equally, and disclosed to the tenant before he or she enters the agreement. If the landlord wants to change or add a rule or regulation, the tenant must consent, preferably in writing, or the landlord will have to wait until lease renewal time. Are pets allowed? What is the policy on guests? Look around and check with neighbors about noise and other living conditions.

(19) If possible, check with former tenants about any defects they know of in the rental unit. You might also talk with neighbors to get an idea of what kind of service you can expect from the landlord.

(20) Check anything else relevant to the dwelling you are renting. Take your time and look carefully. You should make notes of concerns or questions you have and go over all of them with the landlord before you decide whether or not you want to rent a particular place. Kansas law says that, if a place is not in compliance with Kansas law and/or your rental agreement on the day you are supposed to move in, you have the right to get all your money back and go elsewhere. Having promises in writing can make it easier to prove whether or not they've been kept.

GETTING ACCEPTED

Some landlords may decide whether or not to rent to you by just looking you in the eye; some

may ask you a few questions about where you work and who your current landlord is; and some may ask you to fill out very long, detailed application forms. All are acceptable ways of screening tenants.

At this time, there are almost no laws limiting what landlords may ask for on application forms, though Fair Credit Reporting laws require that the landlord not pass the information gathered on to anyone else and Fair Housing laws require that you cannot be turned down because of a need for accessibility modifications.

If you are asked to give information that seems unnecessarily personal, you may want to ask why that information is needed and possibly leave it out. Some landlords know exactly why they want certain information; some simply got the forms from someone else and only use a fraction of what you tell them. Obviously, the most important information a future landlord needs to know is whether you'll pay your rent, whether you'll take good care of the place, and if you'll keep from disturbing your neighbors.

Make sure what you write down is factual. Credit reports, court records, evictions, criminal history, newspaper reports, etc. are all available online; therefore, you can be rejected when application information does not agree with information found in public records. You can even end up losing a rental unit and having to move out if fraud is discovered later.

Many landlords charge a **nonrefundable application fee** when the application is turned in. You will NOT get this money back whether you move in or not. Some landlords pay a screening company to check the application information. If you are turned down because of a screening company's report, ask what information caused the landlord to deny you and what company was used. Before applying with another landlord, ask if he or she uses a screening service. You do not want to end up paying the screening fee several times only to get the same result.

Just as you can be rejected if you lie or fail to provide complete information, truthfulness could

make all the difference. If you know a landlord might discover negative information about you, you can address the issue with a landlord before applying and find out how much flexibility the landlord has. Many times landlords are not concerned about information you have given them, but they are troubled if you have not been upfront and honest.

A landlord has the right to select tenants on pretty much any basis as long as he or she does not illegally discriminate. (See Discrimination chapter.) If you are rejected, ask why. If the reasons don't seem good enough to you and you really want the place, make your case to the landlord. Maybe there are other references or additional information you can offer to convince the landlord that you (and your family or room-mates) are a good risk.

Some landlords ask for the security deposit with the application, others require that the full deposit be paid when the tenant is accepted, regardless of when the lease begins. You should be VERY SURE you want to live in a place before you pay the security deposit. If the landlord turns you down, he is normally responsible to return the full deposit amount; however, you may not get your money back for 30 days. If you pay the deposit and change your mind, you can be charged if you cause the landlord to lose money, even if you have not signed a lease. (See Security Deposit section in Rights and Responsibilities chapter.)

YES, WE'LL TAKE IT

So, it's a place you want, you're satisfied that anything that's not quite right will be, and the landlord has accepted you. You have probably paid a security deposit, you may have signed a lease, and you have a move-in date.

You can relax now, but you need to stay aware of what's happening and continue communication, preferably in writing, with your landlord. Remember, no matter how friendly you are with your landlord (and hopefully you are), you have

a **business relationship** with him or her. Your landlord will treat it as such, and so should you.

IF YOUR PLACE ISN'T READY WHEN PROMISED

Kansas law is very clear that if your place is not ready for move-in on the date promised in your verbal or written rental agreement, you have the right to get all of your money back and go somewhere else. If you want to (or have to) stay, the law says you don't owe rent until it's right.

Specifically, the law expects that whoever was in there before you will be out, that the place will meet minimum standards according to Kansas law and any local housing code (see Landlord Responsibilities section in Rights and Responsibilities chapter), and that any promises made to you by the landlord (your rental agreement) will have been fulfilled. If any of these things are not right, the law says that you don't owe rent (rent "abates") until they are. Then, you have two choices.

1) If you decide you don't want to live there, you can give a 5-day written notice to the landlord stating that you will not be living there, why, and that you want all of your money back. The law does not specify exactly when the five days are to start and end, so give the notice as soon as possible. If you have to use this provision, the law says you are entitled to any rent you paid and your security deposit back (less any deductions for physical damage you caused), and the landlord owes you for any cash losses you suffer.

2) If you decide to stay, you still don't owe rent until the place is available to move in and/or until things are as promised, and the landlord owes you for any cash losses you suffer. You can take legal action to force the landlord to make repairs or keep promises if you like. If the situation is willful and not in good faith on the part of a landlord or on the part of a tenant who did not get out on time, you can sue for 1½ times a month's rent or 1½ times your cash losses, whichever is greater. (Keep in mind... if you ever hold over, someone could also sue you!)

MOBILE HOME PARKS

The Kansas Mobile Home Parks Residential Landlord and Tenant Act (MHRLTA) is patterned after the Kansas Residential Landlord and Tenant Act and ***applies to owners of mobile homes renting lots***. Where the mobile home itself is rented, the Kansas Residential Landlord and Tenant Act (the law described in this book) applies. Most of this book applies to mobile home owners as well EXCEPT:

- The security deposit on a mobile home lot can be as much as two times the lot rent. Pet deposits are NOT addressed.
- The park owner is to maintain security deposits in a separate account. Payment of interest is not required.
- When a park is sold, the owners must notify each tenant in writing of the amount of the security deposit transferred to the new owners. Tenants have 20 days to dispute the amount in writing.
- A lease can be for a maximum of one year.
- When no written lease exists, 60 days' notice to terminate must be given by either party.
- Renewable, written 30-day leases may require only 30 days' notice to terminate.
- No move-in inspection of the lot is required, but it's a good idea.
- A mobile home owner can give a 14/30-Day Notice of Landlord Noncompliance for any period. It's not tied to the rent due date as with residential tenants.
- Any improvements on the lot, except a lawn, made by the mobile home owner are the property of the mobile home owner and can be removed at move out.
- A mobile home is considered abandoned if rent is more than 3 days late and the home owner is absent more than 30 days. The home owner is responsible for all past due lot rents, removal and storage costs, utilities due, and costs of serving any company that has a lien on the mobile home. Costs to the lienholder begin accruing from the date of written notification.
- A mobile home owner on active military duty renting a lot CANNOT give 15 days' notice to terminate a month-to-month rental agreement (as residential tenants can) when transfer orders have been received.

Tiedowns (anchors holding a mobile home to the ground) are required on any mobile home measuring 8' x 36' or larger that is not on a permanent foundation. Specifics on what is required and what has been approved for use in Kansas can be obtained from the Division of Architectural Services, Kansas Department of Administration, 900 Jackson, Room 107, Topeka, Kansas (785) 296-1318. It is a criminal offense in Kansas not to have proper tiedowns.

References: MHRLTA, K.S.A. 58-25,100 through 58-25,126; Tiedowns, K.S.A. 75-1226 through 75-1234. Some cities and counties have ordinances which set out standards for mobile homes and/or mobile home parks. Check with your own city or county for further information. Copies of the Mobile Home Parks Act may be ordered from Housing and Credit Counseling, Inc.

LOW RENT HOUSING



Thousands of rental units in Kansas are subsidized (the government pays part of the rent) through the federal Department of Housing and Urban Development (HUD) and Rural Development (RD) programs. Public Housing, Housing Authority, Section 8, Rental Assistance, and Low Rent are names you may hear or recognize. Formulas for calculating the tenant's share of the rent are similar in all programs. They are based on a government-adopted preference that Americans should not spend more than 30% of available income for housing (including housing payment and utilities). There are special rules for government assisted housing programs; however, the laws of the state of Kansas and local communities also apply. Common programs are:

Public Housing - Low rent housing built all or in part with government funds. With few exceptions, public housing is owned by a local housing authority, governed by a local board of directors, and managed by their staff or on contract.

Project Based Section 8 - Privately owned complexes where HUD Section 8 rent subsidies are available for some or all tenants through a contact between the complex owners and the government. Prospective tenants apply directly to the owner or manager for housing.

Section 8 Voucher Program - A program that allows tenants to take vouchers anywhere in a certain geographic area as long as, following an inspection and approval by the managing agency, the property meets certain size and condition standards. There is no limit on how much the rent can be, only how much assistance is available. The government provides subsidies through managing agencies that contract with the tenant and the owner. The subsidy is paid directly to the owner who applies it to the rent; an additional amount may be owed by the

tenant if the full rent amount is greater than the HUD assistance. Housing Authorities, Community Action Agencies, and Agencies on Aging often are the managing agencies.

Special Section 8 Programs - There are periodically special Section 8 programs targeted at improving certain types of properties or targeted at certain groups of people (i.e. homeless, mentally ill). These programs may have special names such as Shelter Plus Care and are generally operated like the Section 8 Voucher Program.

Tax Credit / Section 42 - A program for new or updated apartment or townhome complexes. The program is available for elderly, families, and single persons. There are limits on income based on the number of bedrooms in units. Rents are the same for all residents. These units are generally not available to households comprised entirely of full-time students.

Other - Local nonprofits and others have also developed local low-rent programs. Check with your City, your housing authority, or the State (see contact information in box in this chapter) to see if there is anything near you.

WHO IS ELIGIBLE (HUD PROGRAMS)

For "elderly" housing programs, a person must be low income, 62 years of age or older, or qualify as disabled (regardless of age). The age limit can go down to 55 if certain amenities such as activities or transportation are available.

To get into "family" programs, families with children and, in most cases, people who qualify for the elderly programs are eligible.

"Disabled" means anyone with a qualifying mental or physical disability.

Single people who are neither elderly nor handicapped are sometimes eligible. Check with the manager.

Unmarried adults who are living together with children are usually considered “families.”

Some programs are limited to people who are homeless or have other special circumstances.

Owners and managers have the right to check into the background of you and your family to decide whether or not to offer you housing or a place on a waiting list. If you are rejected, you have the right to be told why. In both Section 8 and public housing, federal law says the landlord must offer you at least an informal conference. Many programs provide unsuccessful applicants access to a “grievance procedure,” described later in this chapter.

Some programs have priorities, called preferences, for who gets housed first from their waiting lists. Sometimes, for instance, it’s higher-income people first, sometimes lower, sometimes persons with earned income, or people who are in substandard conditions. These priorities change from time to time due to changes in government rules and/or local choices. This policy cannot discriminate against you because you just moved to town. You have the right to see a copy of the written priority policy and to know what number you are on the waiting list. When you are on a waiting list, you are responsible to keep the rental office updated if your contact information changes. If you don’t and they can’t reach you when your name comes up, you can be removed from the list and have to reapply and start all over at the bottom.

In all situations, you must furnish accurate information about the employment and income of each family member and how many people are living with you so the agency can determine whether you are eligible for subsidized housing, the size of dwelling unit you should be in, and how much your rent should be. This is called “income certification.”

In most programs, you will be asked to turn in this information once a year and whenever income or family size changes. This is called “recertification.” If anything has changed, the amount of rent you pay may be raised or lowered or you may be asked to move to a different size unit.

SECURITY DEPOSITS

Expect to pay a security deposit. Kansas law requires that your security deposit cannot be more than your monthly rent unless pets are allowed, in which case the security deposit can be as much as one and one-half times your monthly rent.

Some programs will set your security deposit based on your rent, others will have a flat rate. Some housing authorities have security deposit schedules that are based on the number of bedrooms. Some have a set amount for the pet deposit. In these cases, the housing authority must allow tenants to pay the security deposit in payments rather than all at once. (See Security Deposit section in Rights and Responsibilities chapter for more on Security Deposits.)

MAINTENANCE

Landlords with subsidized housing are required to meet at least the same maintenance standards that are expected of private landlords in the state of Kansas.

Some programs have their own specific maintenance standards and their own inspectors; however, all properties must comply with local codes and ordinances.

EVICCTIONS

Public housing tenants must be given 14 days’ written notice for nonpayment of rent. (This is more than Kansas law requires.) Otherwise, minimum notice in all of the programs is the same as state law and/or as set in the lease. In government assisted housing, the landlord must

WORKSHEET FOR COMPUTING PUBLIC HOUSING AND SECTION 8 RENTS AT 30% OF INCOME

(This is a simplified form which should give you a general idea of how much your rent might be.)

FAMILIES

Gross Monthly Income _____
X 12 (months)

Deductions

\$480 per Dependent - _____

Child Care - _____

Adjusted Gross Income _____
÷ 12 (months)
X .30 (30% of Adjusted
Gross Income) _____

Monthly Gross Rent _____

Utility Allowance - _____
(if tenant pays gas,
electricity or water)

Monthly Net Rent _____

ELDERLY / HANDICAPPED

Gross Monthly Income _____
X 12 (months)

Deductions

\$400 per Household - _____

Medical (Over 3%
Gross Income) - _____

Adjusted Gross Income _____
÷ 12 (months)
X .30 (30% of Adjusted
Gross Income) _____

Monthly Gross Rent _____

Utility Allowance - _____
(if tenant pays gas,
electricity or water)

Monthly Net Rent _____

Gross Monthly Income is defined as the income (before taxes) of all members of the household who are over 18, including students. One-time only income does not have to be counted. Foster-care payments do not have to be counted either.

Dependent is defined as anyone in the household (except the head of the household, his or her spouse, and foster children) who is under 18 years of age, a full-time student, or disabled.

EVICCTIONS (con't)

have a "good cause" to evict someone. "Good cause" may include, but not be limited to:

- Failure to pay rent or other amounts owed
- Failure to fulfill tenant obligations
- Providing false information
- Serious or repeated interference with the rights of others.
- Serious or repeated damage to the premises.
- Criminal activity

GRIEVANCE PROCEDURE (PUBLIC HOUSING AND RURAL DEVELOPMENT ASSISTED PROJECTS ONLY)

In public housing, the tenant may have the right to a hearing before an impartial person or panel if the tenant disagrees with a proposed action of the management. In the case of eviction disputes, federal law allows Kansas housing authorities to skip the grievance procedure and insist on going to court, but most will allow you to file the grievance anyway.

If you disagree with an action taken against you, either as a tenant or an applicant for public housing, you may file a grievance against the management stating the source of the disagreement and what you think should be done to correct it. If you wish to file a grievance, both you and the management must follow the specific grievance procedure adopted for that complex. Ask for a copy if you don't have one. It should be very similar to the procedure outlined below:

(1) You must personally deliver the written grievance to the housing authority, usually to the director, within the time stated in the notice. In this way, the grievance may be informally discussed and possibly settled without a hearing.

(2) Within 5 business days, you should receive a response with the following items included:

- A suggested settlement.
- Signature of a member of the management.
- The date.
- A statement informing you of your right to a hearing before an impartial person or panel and how to obtain it.

(3) If you are not satisfied with the response, you can send a dated, written request for a formal hearing to the director or project manager's office, usually within 5 business days.

If you do not request a hearing within this time, you will probably forfeit your right to appeal this particular case.

(4) If you request a formal hearing, you will be mailed information with the date and time of the hearing.

(5) You have the right to see any documents the management plans to use against you in advance.

(6) At the hearing, you will have the opportunity to:

- Be represented by an attorney or another person of your choice.
- Present your evidence.
- Question the management's evidence.

(7) If you find the person or panel's decision unsatisfactory, you may appeal it in court. Likewise, management must take court action to proceed further against you. Remember, if you ever receive an eviction or any notice that you feel is unfair, appeal it immediately, don't wait.

ADMINISTRATIVE REVIEW PROCEDURES (SECTION 8 AND HOUSING VOUCHERS)

Federal law requires anyone who runs a Section 8 program to adopt an "administrative plan" that contains a review procedure to be used when a tenant has a grievance or wants to appeal a decision.

TO FIND OUT IF THERE IS AFFORDABLE HOUSING IN YOUR TOWN...

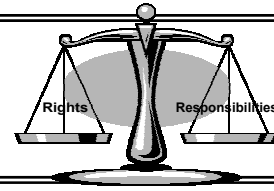
Kansas Regional HUD Office
400 State Ave., Room 200
Kansas City, Kansas 66101-2406
(913) 551-5462
www.hud.gov

Kansas Rural Development State Office
1303 First American Place, Suite 100
Topeka, Kansas 66604
(785) 271-2700
www.rurdev.usda.gov/ks/

Kansas Housing Resources Corporation
611 S. Kansas Ave., Suite 300
Topeka, Kansas 66603-3803
(785) 296-5865
www.kshousingcorp.org

There are volumes available on each kind of government assisted program, the regulations are constantly changing. Ask these sources or your manager to give you a copy of the regulation(s) you want to see.

If you can't get the information you need from these sources, contact Housing and Credit Counseling, Inc. at (785) 234-0217 or (800) 383-0217.



RIGHTS AND RESPONSIBILITIES

The Kansas Residential Landlord and Tenant Act specifies rights and responsibilities for Kansas landlords and tenants. It has 33 sections and covers landlords and tenants who don't have written agreements as well as those who do.

Just like the Landlord-Tenant Act, any city or county codes or laws in your area that have to do with housing will affect both you and your landlord. **You should find out what they are and know what they say.**

SECURITY DEPOSITS



Before you are able to move into a rental property, your landlord may ask for a security deposit. The security deposit is generally used by landlords to hold the rental unit for the tenant until the lease begins. If you leave the money with a landlord, but then decide not to rent, the landlord may try to keep the entire deposit and even sue for additional damages, depending on the situation.

After you move into the place, the money is held by your landlord as insurance against the risk that you will damage the rental unit, leave owing rent, or cause the landlord expenses because you have not followed the law or your rental agreement.

If you agree to clean the premises or perform maintenance and/or repairs instead of paying a security deposit, **be sure to get it in writing or included in the lease.** This must be carefully agreed to: How many hours? At what rate? Exactly what is to be done? Who pays for supplies and materials? When must the work be done?

If agreed, you need to make sure your lease shows an amount of money credited for your security deposit that will be returned to you when you move out and leave the place in

good condition. A better option may be to pay the deposit and perform maintenance and/or repairs in exchange for rent. The same questions should be asked, agreed to, and plainly stated in a written agreement.

Kansas law clearly defines how security deposits can be used and how to get them back. You can protect your security deposit by remembering a few important things:

- Landlords do not have to collect security deposits. They may, but they don't have to.
- Landlords do not have to pay interest on the security deposit. If your landlord agrees to pay interest, you should get it in writing.
- There are limits on how much a landlord may charge for a deposit:
 - unfurnished** – 1 month's rent
 - furnished** – 1½ month's rent
 - pets** – additional ½ month's rent

So, if the rent on your apartment is \$400 per month and the apartment is unfurnished, your deposit can be no more than \$400. If it is furnished, the deposit can be no more than \$600. You could be charged an extra \$200 if you have a pet or pets (total of ½ month's rent). With pets and furniture, then, it could go as high as \$800. These rules are especially important to watch if you are renting with roommates and the landlord is collecting a deposit from each of you. The total cannot legally go over the limits.

- Ask that the amount of the deposit be written into your lease.
- Get a receipt for payment of the security deposit.
- Normal wear and tear on your apartment could be misrepresented as damage. To prevent this, be sure to fill out a checklist or inventory when you move in. (See Move-In Inventory section in this chapter.)

- Do not try to use your security deposit for rent while you live there and do not try to use it for the last month's rent. The Landlord-Tenant Act says if you do, you could lose your security deposit and still owe the rent you were trying to use it for.
- If possible, get your landlord to inspect your place with you before your move-out date. This way, you can agree on what is dirty or damaged and how much it will cost to repair. If there is cleaning or repair work to be done, you would have the chance to do it yourself so it won't be paid for with your security deposit.

The law allows your landlord to keep all or part of your security deposit for three reasons:

(1) Physical damage beyond normal wear and tear caused by you, your family, your guests, and/or your pets.

(2) Rent that is past due.

(3) Other expenses your landlord has suffered because you have not complied with the law or your rental agreement. This could include the cost of running an ad to get new tenants if your landlord normally runs ads and you break a lease before its term expires, or all or part of the next month's rent if you are renting month-to-month and do not give a proper 30-day notice and the landlord is unable to get another tenant to move in immediately after you move out.

If the total amount of itemized damages is more than the security deposit, the landlord can compile the itemized list of deductions, credit the deposit, and send you a bill for the amount still due. If you do not pay, the landlord may file in Small Claims Court or higher court to collect the money owed when damages are more than the security deposit.

Judges vary on their interpretation of the law, but if your landlord tries to keep your security deposit for anything other than the reasons listed above (such as "liquidated damages" or for breaking the lease), you should argue that Kansas law does not allow this and that the

landlord should return everything except what can be specifically itemized.

Judges generally allow landlords to bill you for their time at reasonable rates if they do certain cleaning or repairs that were your responsibility, but not for showing the place, screening new tenants, and other costs of doing business.

When a landlord is charging you for **replacement of an item**, the charge should only be for actual value. In other words, if the charge is for a repair, it should only be for the actual cost of parts and labor or based on a reasonable bid the landlord got for the repair. As long as you were responsible for the damage, a repair does not actually have to be made for you to be charged. Replacement charges should be figured on the value of an item that day. For instance, if you ruined a new rug, you could be charged full replacement value; if you ruined a rug that was five years old, you should only be charged the depreciated value of what the rug was worth that day. Again, the landlord does not actually have to replace the item to have the right to charge you.

If the landlord withholds any portion of the deposit for any reason, he or she must give you a written list of itemized deductions. The deposit and/or the itemized list of deductions are required by law to be sent to you within 30 days after you give up possession (typically when the keys are returned).

If your landlord doesn't return your money, doesn't send the list of damages, or you disagree with the deductions and the amount of money you got, you should take steps to settle the matter. First, you should write your landlord, explain what you want or where you disagree, and give the landlord a chance to write back and/or send more money. If you can't settle with the landlord, you may file in Small Claims Court for whatever you think is fair. If the landlord did not even attempt to return your money or send you the written list of deductions within the 30 days, you can sue for 1½ times the amount wrongfully withheld in addition to

what you feel you is due. (See Small Claims Court chapter.)

Example: \$400 security deposit is wrongfully withheld. In a court action, you could ask for the \$400 plus \$600 damages (1½ times the amount wrongfully withheld) a total of \$1000 plus the filing fee for the court action.

When you move out, be sure to leave the landlord a forwarding address where your deposit may be sent. If for some reason you don't want to give your new address, you can always give that of a relative or friend. (If you forget about the deposit and do not make a demand for it, the landlord is still required, by law, to attempt to return it to you at your last known address.)

If the place you rent is sold, the old owner is required, by law, to account for your deposit. Make sure you either get your money or a signed paper saying your money (specifying exact amount) has been transferred to the new owner. The new owner can ask for additional

money for the deposit but the total cannot go over the legal limits and you should get at least a full rent-period's written notice before you have to pay. If you are in a long-term lease, the new owner must wait until the end of the lease to adjust the security deposit as well as the rent or any other lease provision. After the sale and the new owner takes possession of the property, the new owner becomes responsible for the return of the security deposit or the itemized list just as the original owner was.

NOTE: Before you file for a security deposit return in Small Claims Court, think about whether you have a good case and whether your landlord would have a claim against you. Did you give proper written notice as required by the law or your lease? Was your rent paid up? Did you leave everything in just as good or better condition than you found it? If the answer to any of these questions is "No," then you'd better think carefully about whether you really have a case and how much money you can reasonably expect to win. Don't waste your time, the court's, or the landlord's if you are in the wrong.

ROOMMATES

Choose carefully! When two or more people decide to share a place and enter into a lease together, they take on certain legal responsibilities. When roommates are parties to a rental agreement, they are usually legally obligated both individually and as a group, to fully perform the terms of the lease. This means if roommates leave during lease terms, they are still liable for their share of expenses. However, the remaining roommates may well be expected to pay the entire rent and keep the utilities on or face eviction.

Roommates have legal responsibilities to each other. They usually agree, preferably in writing, on what bills will be shared, in what way they will be shared, and what rights each has regarding use of the place. Although roommates usually agree to share utility costs, utility companies typically require the account be in one person's name; that person must then collect from the remaining roommates for their shares of the bill.

Does the lease have a provision for the replacement of tenants if problems arise among roommates and someone moves out? Permission from the landlord is typically requested or required before a new person can be moved in, and a prospective tenant should expect to apply and be screened as the original tenant was. If accepted, the new roommate should be added to the lease.

Financial disputes between roommates can be settled in Small Claims Court.

LEASES / RENTAL AGREEMENTS



A **rental agreement** is a **legally binding contract** between you and your landlord. It should state the rights and responsibilities of both parties. Although it may be either written or verbal, it is best to have your agreement in writing. With things in writing, there is less confusion over the details of the original agreement if a problem occurs. Just because your agreement is in writing, it doesn't automatically have to be for six months or a year. It can be from month-to-month or for any term. A verbal agreement cannot be for more than a year. In all cases, whether there is a written agreement or not, the landlord and the tenant are subject to the laws of the state of Kansas and its governmental subdivisions.

To protect yourself and your rights, consider the following suggestions **before** signing a **lease**:

(1) Get a copy of the lease, take it home, and **read it carefully!** Do not be discouraged by technical language or fine print. If you have a question about any part of the lease, ask the landlord to explain it or take it to a qualified person or agency. If the landlord won't give you a copy of the lease to read, be wary.

(2) Do not move in and start paying rent before you have agreed to the lease terms. Leases with only the landlord's signature can be enforceable when the tenant has a copy and has paid rent "without reservation." If your landlord sends you a signed lease with instructions for you to sign it, don't sign unless you agree to the terms. However, if you don't sign, write the landlord a letter immediately saying that you didn't sign the lease and explaining what you want changed. You can even send a lease of your own and ask your landlord to sign it instead. If you do this, you won't be bound by the landlord's lease until you and the landlord agree on a lease and you sign it.

(3) Make certain all the blanks are filled in and the information is correct before you sign anything. The correct date should be noted.

(4) The name and address of the manager and the owner or a person authorized to receive notices and demands from the tenant should be in writing. This information must be kept current. If not already provided, ask for emergency contact information (i.e. after hours, weekend, and holiday contact information).

(5) If the lease is longer than month-to-month, be sure to find out what the consequences will be if you break the lease and move out early.

(6) Watch for language about **the end or the renewal of the lease**. Read carefully for notice requirements. Leases can require less than the normal 30-day notice; they can also require more, some require 60, 90, and even 120 days or longer for written notice from either party or the lease automatically renews for another full term.

(7) There are a number of inequitable clauses which are very undesirable and often illegal. Clauses which are prohibited by Kansas law are not only unenforceable, but if a landlord deliberately uses a prohibited clause, the tenant can receive money damages. Some of these clauses are:

- "exculpatory" clauses which say the landlord will never be liable for damage or personal injury to you or your guests.
- "confession" clauses in which you admit guilt in advance to any charge for damages.
- "as is" or "disclaimer of duty to repair" clauses which allow the landlord to disregard responsibility for making repairs.
- clauses which permit the landlord to enter the rental unit at any time without notice.
- clauses which give the landlord the right to evict you without proper notice.
- clauses which allow the landlord to take your personal possessions if you don't pay your rent.

- clauses that forfeit your security deposit automatically.
- any other clauses where you agree to give up rights you have according to the Kansas Residential Landlord and Tenant Act.

(8) It is possible to make changes in a lease. If you and your landlord agree, cross out what you don't want, write in what you do want, and initial and date in the margin right next to the change on both copies. If any part of the rental property (for example: storage shed, garage, basement) will not be available for you to use, the restriction should be clearly noted in the lease. If you want to add something, write or type it in on the lease somewhere above the signatures, then both of you need to date and initial the addition.

If there is not enough room, add another page (you will need two copies). Write Addendum to the Lease (or Rental Agreement, whatever you're calling it) For the Property at (your address) and the date at the top of the page. Then write whatever you have to write. You and your landlord can write these things yourselves. Take your time and make sure your words say what you mean them to say. A statement should be included in the lease, above the signatures, such as, "see addendum" or "see attachment." Signatures should be the last thing to appear on a legal document.

(9) When you have a written rental agreement, any later changes or additions should be in writing also. Our legal system expects that, once any part of an agreement is in writing, all of it should be in writing to be legally binding.

Many tenants feel they are in a poor position to argue over provisions in a lease. If they do, they fear they stand the chance of losing the place to a less "uppity" renter. Unfortunately, this does still happen. However, this will not change until the unwilling landlords learn that to get and keep good tenants, they must not fear negotiated agreements when requests are reasonable. DO be assertive about proposing your own lease or asking to add or change clauses. NEVER sign a lease that contains clauses you cannot live with and that could be used against you. There ARE other places.

(10) Notary publics are not required to observe the signing of leases. Having a witness is a good idea, but is not required.

(11) Make sure you get a copy of your lease and any amendments – anything you sign.

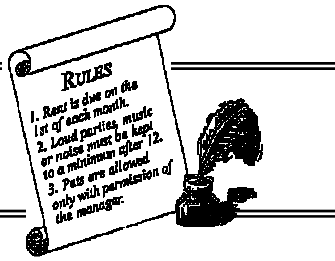
Keep your copy of the lease with your other rental information papers in a secure place where you can find them and read them. If you have any questions or problems in the future, you will need to go back to them and go by what they say.

RENTERS INSURANCE

Renters insurance may be the most overlooked by consumers. Landlords have insurance, but ONLY for the building; they are not responsible for protecting the renter's property.

Renters insurance, to insure your household contents and personal belongings, is available to anyone living in rented housing. Rates vary depending on the amount of insurance, the area in which the apartment or house is located, and the type of structure. You should check several companies to determine which is cheapest and provides the best coverage. Check especially whether the policy covers things stolen (for example, a bicycle or items stolen from your car). Make sure that items stored in a locked storage unit (either provided by the landlord or elsewhere) are covered in your policy. Also check what the deductible amount is, and whether the insurance company will pay replacement value for possessions which are stolen or destroyed by fire. The Kansas Insurance Commissioner's office has information about companies doing business in Kansas and comparable insurance rates. Phone: (800) 432-2484 Website: www.ksinsurance.org

RULES AND REGULATIONS



In addition to the lease or rental agreement, a landlord may have a list of rules and regulations. The landlord is required to notify you of them before your rental agreement begins. Examine all rules carefully and decide if they are compatible with your lifestyle. If the rules don't suit you, don't move in. While there is no limit to the number of rules you may be forced to live with, Kansas law does limit their purpose. All rules must be designed either to benefit the tenants or protect the landlord's property. They must be clear and they cannot be for the purpose of

allowing the landlord to avoid his legal responsibilities. Rules must apply equally to all tenants.

If the landlord wants to change or add any rules during the course of your rental agreement, you and the other tenants will be bound by them only if you voluntarily agree to them in writing. Otherwise, the most the landlord can do is give notice of what the new rules will be when rental agreements renew. This would mean that as long as the landlord followed notice requirements in a long-term lease, the rules would take effect when the lease renewed or went month-to-month. With a month-to-month arrangement, each new month is like a new lease; therefore, the new rules would take effect after a 30-day written notice in advance of a rent date (just like an eviction) whether you agree or not.

SALES AND FORECLOSURES

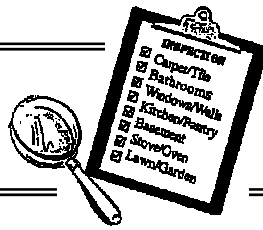
SALES – In Kansas, when a rental agreement is in place and the property is sold, the rental agreement continues with the same terms and conditions as with the original landlord. If you have a month-to-month agreement, written notice of any changes – rent increase, termination notice, change in rules and regulations, etc. – must be given to the tenant one full rent period in advance of the change taking place. If you have a term lease (i.e. 6 months, 12 months, etc.), proper notice must be given in accordance with the lease requirements.

When tenants have a term lease and rented property is sold, if the new owner does not wish to continue the rental relationship, a "buy out" may be an option. The new owner and the tenant may be able to come to an agreement to terminate the lease in a way that is fair to both parties. For instance, the new owner may agree to cover the reasonable expenses of the tenant's move and the increase in rent the tenant will be paying at the new residence. Any agreements should be in writing and all parties should have a copy. If an agreement cannot be reached, the tenant does not have to move.

FORECLOSURES – If a rental property is foreclosed on while you are living there, your lease may continue or it may not. There are several legal steps involved in a foreclosure action and a significant amount of time typically passes during this process. Specific legal conditions and requirements may affect your right to remain in the dwelling.

At the end of the process, if ownership of the property is transferred to the mortgage holder, a local realtor is often hired to show and sell the property. Sometimes a visit from the realtor is the first the tenant knows about the foreclosure action, so it is important to remember that you may have the right to stay in the property under the same terms and conditions as your rental agreement. If you are in a property that is being foreclosed on, it is strongly advised that you contact an attorney familiar with foreclosure actions and repossessions to help you know your rights.

MOVE-IN INVENTORY



Within 5 days after you move in, Kansas law requires that you and your landlord go through the property together and make a detailed, written list describing the condition of the premises. This is commonly known as a move-in “inventory” or “checklist.”

This list can be done on a printed form or a plain piece of paper. What is important is that, when it is signed, it contains all the details of what condition your place was in and what was in it when you moved in. Either by writing two copies exactly the same, by using carbon paper, or photocopying the list when you get done, both you and the landlord must, by law, have copies of the list signed by both of you.

Check the property from top to bottom. Are there cigarette burns in the carpet? If so, where? How many? How big are they? Are there nail holes in the walls? Is the carpet stained or dirty or has it been cleaned? Is the oven clean? The stovetop? Do the burners work? Note furnishings and appliances provided by the landlord and their condition. If there is a basement, you should inspect there. Walk around the outside of the place and note the condition. If a garage or storage building is part of your rental, check it as well. If you will be responsible to take care of the yard, note the condition. A move-in inspection should cover all of the property included in your rental agreement.

Don't sign your name to a list the landlord has filled out before you check for yourself! The law says you and the landlord are to do the inspection together. Don't sign a list that just says “Okay” or “Clean.” “Okay” or “Clean” isn't going to do much good at move-out time when you need to prove that a window was already cracked or a door handle was already broken when you moved in.

Now is a good time to ask the landlord if he has a check-out list or a list of things he or she will expect to be done and will inspect when you leave. These are things you want to look at closely when moving in. You are to return the unit in as good a condition as when received except for normal wear and tear.

As you inspect, if you discover things that need repairs, put the landlord's promises down in writing right on your checklist. If the landlord says he or she will replace that sagging closet rod within two weeks write down, “Bedroom closet rod bent. Landlord will replace in two weeks.” When you and your landlord sign the inspection sheet, you will have signed promises from your landlord for hopefully all of the repairs that are needed.

If you can't get the landlord to do an inspection with you, do one yourself anyway. Get someone reliable to be a witness and inspect with you. Make the written list, you and your witness sign it, then send a copy to your landlord. If you later discover something you missed on your list (like the bathtub drains slowly or the towel bar has been pulled from the wall and not fixed correctly), send the information to your landlord in writing right away, ask that it be added to your original checklist. Make a copy of what you wrote and keep it in your Rental File.

Take pictures or a video if you can. Have someone with you to verify when you took the pictures. Don't rely on the date the camera prints on the pictures. When taking pictures, be sure to use something to show the size of whatever you are photographing. If you don't have a measuring tape or ruler, use your hand or a book or something to show the size of the damaged area.

When you move out, you can request your landlord re-inspect the home with you and sign a move-out checklist or a statement that the rental unit is in satisfactory condition. Although this is desirable, Kansas law does not require the landlord to complete a move-out inspection with you, only the move-in inspection is required. (See Security Deposit section in this chapter for return of deposits.)

RENT AND LATE FEES



Rent is due, in full, on or before the rent-paying date. In Kansas, in a month-to-month tenancy, if a rent-paying date has not been specified, the law says it is assumed to be the first of the month. If your rent date is to be other than the first, it's best to have it in writing!

The law also says that if the landlord has not specified that you should deliver or mail the rent, the landlord is expected to pick it up at the dwelling. The landlord can require you to pay the rent in a specific way; he may not accept personal checks or cash, he may want only money orders or cashier's checks, etc. However you pay, a dated receipt signed by the landlord proves you paid and when. NEVER pay cash unless you get a receipt when you hand over the money.

Your landlord can charge a "late fee" if you pay your rent late as long as it was included in your rental agreement. Whatever you have should clearly state when the fee will be assessed and how much will be charged. If your landlord wants to add the ability to charge late fees, a 30-day written notice in advance of a rent date would be required in a month-to-month tenancy. The landlord would have to wait until renewal time to start charging late fees when a term lease is in place.

RENT RAISES

Kansas law does not limit how much your rent can be raised or how often.

Because a rent raise is similar to an eviction, there is one rule. If you have a month-to-month lease, your landlord must inform you, **IN WRITING**, of a rent raise at least 30 days before the rent date when it is supposed to go into effect. Having utilities transferred to your name is the same thing as a rent raise, so the same rule applies.

It is preferable to get at least 45 days' notice so you can decide whether to stay or give a 30-day notice and move, but 30 days is all that is commonly required.

If you get a notice of a rent raise, check your lease, if you have one. One reason people sign long-term leases is to protect against rent raises for periods of 6 months or a year or whatever period your lease covers. If your lease doesn't allow for a rent raise, don't pay. Or if your lease allows for rent raises only to cover costs of increased taxes and utilities (an "escalator" clause), insist on seeing the last year or two's receipts to prove that the increase is fair and necessary. You may be surprised at the costs, but maybe the increase will be dropped.

If you live in a complex where rents are raised and you and the other tenants think it's unfair, about the only way you can deal with it is by organizing and negotiating with management as a group (see Tenant Organizations chapter). You may at least be able to get the landlord to make repairs or do other things that have been promised.

GUESTS, GUESTS WHO STAY

Tenants have the right to have guests in their homes for reasonable periods of time unless the rental agreement specifically prohibits company.

If your rental agreement specifies who or how many people can live in your property, as most do, and you let someone move in, you could be at risk. Because you are not complying with your rental agreement, your landlord could insist on new lease terms (maybe more rent), could require the new person to apply and be screened as a tenant, or could ask you to move out.

If you want to let someone stay with you more than 30 days or longer than your lease allows, it is best to get your landlord's written permission.

LANDLORD RESPONSIBILITIES



Kansas law says the Landlord is required to:

- Keep the apartment, mobile home, or house where you live in compliance with state law and city or county building or housing codes affecting health and safety.
- Maintain the common areas of the building and the grounds outside; these are areas open to all tenants such as hallways, parking lots, and laundry rooms.
- Make sure you have an adequate supply of hot and cold running water.
- Supply a reliable amount of heat during the winter months. A normal standard is that it should be possible to keep the temperature at 65 degrees between October and May. (The landlord doesn't have to pay for the water, electricity, or gas but must provide the equipment and it must work.)
- Maintain all electrical, plumbing, sanitary, heating, ventilating, and air conditioning systems in good and safe working order.
- Maintain all appliances that are provided with the property. This would include such things as stoves, refrigerators, and air conditioners.
- Make sure trash removal is available.
- Allow tenants to contract for service with telephone and cable companies that are authorized to do business in the area.

HOUSING CODES

Many cities and towns in Kansas have housing codes. As opposed to a building code, which is for new construction, a "housing code" or

"property maintenance code" is for buildings that already exist. They set basic standards for how buildings and property ought to be maintained. Housing codes are usually more specific than the general requirements outlined in the Landlord Tenant Act and, of course, they apply only to housing within the particular city or county that passed the code.

To give you an idea of what codes often require, a box containing some of the requirements from the Property Maintenance Code for the City of Topeka can be found later in this section.

Unless a code specifically says the tenant or the "occupant" is responsible for particular things, or unless you, the tenant, caused the problem, landlords are responsible to make sure their rental units comply with laws and codes. If you like to do home repairs and volunteer to do things for your landlord, in many cases, that's fine; however, some codes require that certain repairs be done by a person "certified" in a specific area, for instance, a licensed plumber or electrician. It is strictly **ILLEGAL** for your landlord to refuse to make required repairs or to force you to do them. If this happens, you can terminate your lease and/or the law allows you to sue for actual damages. (See 14/30-Day Notice of Landlord Noncompliance section in this chapter.)

Right now, neither state law nor local housing codes require insulation, storm windows, or other specific weatherization on rental property anywhere in the state of Kansas. There are also no requirements for efficiency of heating and cooling appliances or rules limiting the cost of tenants' utility expenses. But most local codes have some language requiring that property be "reasonably weather-tight, water-tight, and damp-proof" and have minimum heating temperature standards.

In some cities and towns, although a code exists, there is no steady effort to enforce it. You should be able to get a copy of your local housing code from your housing inspector or city or county clerk or check their websites.

EXAMPLES FROM TOPEKA'S PROPERTY MAINTENANCE CODE

Screens: Screens and screen doors are required on almost every dwelling unit in Topeka for the months of April through October.

Pests: The landlord is required to deliver units to tenants pest-free. Rats, roaches, and other pests must be exterminated by the landlord when they are found in buildings with more than one apartment or when they exist because of a landlord's improper maintenance. If you live in a single-family house and there were no pests when you moved in, the Code says it's the tenant's responsibility.

Ventilation: Every room must have a window or, in the case of a bathroom or kitchen, a ventilation system which is in good working condition.

Heat: The owner must provide a heating system that is capable of heating to a temperature of at least 65 degrees at a distance of three feet above floor level in every habitable room.

Exits: There must be two exits to safe and open space at ground level from each level in each dwelling unit.

Locks: There must be safe, functional locking devices on all exterior doors and first-floor windows. Padlocks on the outside of exterior doors are prohibited.

Lighting: Every room, including the bathroom and kitchen, must have at least two electric outlets or one outlet and one wall or ceiling fixture. Each public hall and/or stairway in a building with three or more units must be adequately lighted by natural or electric lights at all times.

Structural Maintenance: The building and foundation must be maintained watertight, rodent-proof, and in good repair. Staircases must be stable with hand rails. Porches and steps must have a railing if they are over three feet off the ground.

Kitchen: The sink must be in good working condition. The drainage must flow into an approved sewer system, and it cannot leak into storage cabinets or shelves. The refrigerator or device for safe storage of food must maintain a temperature of between 32 degrees and 45 degrees Fahrenheit under ordinary maximum summer conditions. There must be adequate hot and cold water at all times.

If you ever need to call and request an inspection, make an appointment so you can be there to let the inspector in and go through the house with him or her. You should make sure you point out all things you think are code violations. Ask that the code office send a copy of the inspector's report and the letter to the landlord to you also. You can call and visit

your housing inspector regularly until action has been taken to your satisfaction.

Most codes provide some sort of penalty (fines... or even jail) to property owners who do not comply after a certain period of time. Check your code to see what the time limits and penalties are and insist that your city or town take action if your place is not getting fixed.

FIRE CODES

The Kansas Fire Safety and Prevention Act of 1998 (also the Smoke Detector Act of 1998) requires all dwelling units to have smoke detectors, does not require fire extinguishers, and generally requires two safe exits to ground level from any floor.

Specifically, the Act requires every single-family residence to have at least one working smoke detector on each floor and apartment buildings must have working detectors at the top of each stairwell and on each floor in every dwelling unit.

In apartment buildings and multiple-family dwellings, the owner must supply and install smoke detectors in all dwelling units and common areas. The owner must test and maintain all smoke detectors, except inside rental units; the tenant is responsible to test and maintain all smoke detectors after taking possession of the dwelling unit.

Local governments may adopt their own fire codes and make them stricter, but not more permissive, than the state's. Check with your fire department to see if you have a local code. If not, you may direct questions to the State Fire Marshal in Topeka at (785) 368-4026.

LEAD-BASED PAINT REGULATIONS

Federal Environmental Protection Agency (EPA) and Housing and Urban Development (HUD) regulations concern lead-based paint for housing built before 1978. To comply, landlords must:

- Disclose the presence of known lead-based paint and/or lead-based paint hazards in the rental unit.
- Provide tenants with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards.
- Provide tenants with a federally approved lead hazard information pamphlet.

Tenants must sign a document confirming that tenants received the 3 items above.

Whenever repair/renovation work that will disturb an area of two square feet or more is going to be done, landlords must:

- Provide tenants at least 7 days' prior written notice.
- Provide a federally approved lead hazard information pamphlet again.
- Provide a disclosure form about the planned work.

Tenants must sign a document confirming that tenants received the above information.

Copies of the pamphlet and disclosure form may be obtained FREE by calling The National Lead Information Clearinghouse at (800) 424-LEAD. Copies may also be obtained on the Internet at www.epa.gov/lead/pubs/leadpdf.pdf or www.unleadedks.com. HCCI's Model Lease includes an approved disclosure form.

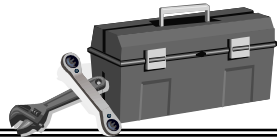
References: 40 CFR Part 745 and 24 CFR Part 35 published on March 6, 1996, in the Federal Register; Pre-Renovation Lead Information Rule, effective June 1, 1999.

MOLD CONTAMINATION

The issue of mold contamination in housing has become an issue of concern. Kansas Department of Health and Environment officials say to be concerned but not alarmed. You can keep informed about this issue and the most current information available by going to the following websites:

Environmental Protection Agency – www.epa.gov/mold/moldguide.html
Center for Disease Control – www.bt.cdc.gov/disasters/mold/protect.asp

TENANT REMEDIES



Make it a habit to **REQUEST MAINTENANCE IN WRITING**. Not only is this good business in a legal sense, but it is also good business in a practical sense. You can say what needs to be said the way you want to say it. You don't have to be there when the landlord gets the news that something has gone wrong. And, written notes tend to keep turning up and reminding people of things, whereas mental notes are easily forgotten. On your copy, note how, when, and to whom the notice is delivered. Example: "Handed to Sue in the manager's office, 9:00 a.m. on May 1, 2006."

Depending on the landlord and your lease, phone calls can be OK for the first contact about a problem or in an emergency; but after that, calls should only be to say, "Did you get my note?" Some leases require maintenance requests be made in writing. Sometimes, as we know, phone messages do not get to the intended person. Finally, you want to be sure you can prove the landlord was notified about every problem so that if problems worsen or something is damaged or someone is hurt, the landlord can't say he or she didn't know.

14/30-DAY NOTICE OF LANDLORD NONCOMPLIANCE

If the landlord continually fails to meet maintenance or contract agreements, the Kansas Residential Landlord and Tenant Act gives you the right to eventually break your lease. To do this, you must give the landlord a written notice at least 30 days before a rent due date. In your notice, tell the landlord exactly what repairs or other actions are needed and that you will be terminating your rental agreement and moving out before the next rent date **UNLESS** the repairs or actions are adequately taken care of within 14 days after receipt of the notice.

If the problem is not fixed, or at least a "good faith effort" started, within the time you allow,

then you can terminate your lease and move out at the end of the rent period. Assuming you were a good tenant (paid the rent, didn't tear up the place, etc.), the landlord should not pursue you for future rent and should return your security deposit. If you give the notice and decide not to move, make your plans well known to the landlord in writing. (See Terminating the Tenancy and Security Deposit Returns in this chapter.)

Kansas law also provides the tenant the right to collect "damages" from a landlord if the landlord does not comply with the laws. This means you have the right to ask your landlord to compensate you for your actual losses (repair bills you had to pay, costs to stay somewhere else or eat out when all or part of your place was unusable, damage to your furniture or other belongings due to the landlord's negligence, medical bills that you allege are the fault of the landlord, utility bills you had to pay which were high because the landlord failed to repair something that was the landlord's responsibility, and so on). This applies whether you decide to break your lease or to stay.

If you and the landlord cannot settle on a dollar amount and payment plan which satisfies you, you can go to Small Claims Court or have an attorney take your case to a higher court and get a judgment there.

Kansas law does not allow the tenant to hold back ("withhold" or "escrow") rent or to take expenses out of the rent ("repair and deduct"). Though neither action is specifically illegal, they are not specifically legal either, and the landlord does have the right to give an eviction notice in any case where the rent is not paid in full and on time. Both of these actions, though they sometimes work, are risky. Neither is advisable without the support of an attorney. If you try either, you should be prepared to pay the rent in full if you get an eviction notice or have your attorney take over. You should also have documentation showing your attempts to get the landlord to make the repairs or provide the maintenance requested.

The cities of Atchison and Manhattan have ordinances that allow for escrow of rent in certain

situations. If you rent in either of these cities and think your situation might fit the escrow ordinance, contact the city clerk's office to find out the process and follow it exactly. (See Escrow Ordinances information in Legal Reference section.)

WARRANTY OF HABITABILITY

Steele v. Latimer, a 1974 Kansas Supreme Court case, established the principle of an **"implied warranty of habitability."** This decision says that when a landlord rents out a place, the landlord is giving an implied guarantee that the rental unit is basically decent, safe, and sound. So, if your landlord won't repair your home and the problem is a violation of the local housing code, you can sue for damages and back rent, as long as you continue to pay rent. (Interpretations of this case say it applies to all problems "materially affecting" health and safety, whether or not there is a housing code.)

In *Steele v. Latimer*, a Wichita woman and her five children ended up getting \$800 back from a landlord who had negligently refused to make repairs. Since then, citing this case and the Kansas Landlord Tenant Act, tenants have successfully defended themselves and won counterclaims based on the "implied warranty of habitability" that all landlords in Kansas are expected to provide places that are basically decent, safe, and sound.

DAMAGE OR DESTRUCTION BY FIRE OR CASUALTY

If a fire, a flood, or some other disaster strikes so that you can't live in all or part of your place, Kansas law provides some options.

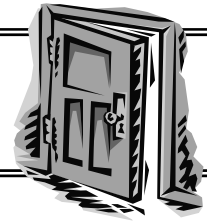
You can give a written 5-Day Notice to Terminate and move out immediately if your place can't be lived in at all. The law says any prepaid rent after the move-out date should be refunded to you. Your security deposit is to be returned as in a normal move out.

If part of your place is livable and part is not, the law says that the rent is to be reduced proportionally until the whole dwelling is repaired and usable again.

Assuming the landlord has insurance, it should cover most of the repair expenses. The tenant can be charged with at least an insurance deductible amount if the fire or casualty was the tenant's fault.

The landlord's insurance may provide temporary housing expenses for you. If you cannot stay in your rental unit, **ask** the landlord to check what his insurance will pay for. If you are in an apartment complex, perhaps you can move temporarily or permanently to another unit.

LANDLORD ENTRY



Tenants occasionally face another problem during tenancy – landlord entry. Tenants wonder, "Can the landlord enter my home whenever he wants?" The answer is "NO," not legally. Only in cases of hazard involving the possible loss of life or severe property damage may the landlord enter your home without permission.

Kansas law allows the landlord, after giving "reasonable notice" and arranging a "reasonable time," to enter your home for almost any reason – to inspect the premises; make necessary or agreed repairs, decorations, alterations, or improvements; or to show the place to possible purchasers, lenders, tenants, workmen, or contractors.

"Reasonable notice" is something you and your landlord have to decide together. If you don't mind if your landlord comes over without calling first, that's fine. But you can insist that your landlord let you know as much as 48 hours in advance. One to 24 hours is common. You should select your normal standard, preferably put it in writing, and be consistent.

"Reasonable time" is also something you and your landlord need to work out. Because you are paying rent on your place, you have a right to privacy and to decide who comes in and out. If it

is important to you, you have the right, within limits, to insist that you be at home when your landlord comes over. So, if you work days, you have the right to ask that your landlord come over after you get home or on the weekend. If you work 3 to 11, you have the right to ask your landlord to come before 2:30. And so on. If it is impossible for you to arrange a time when you can be at home and your landlord can reasonably arrange to come over, then you may need to arrange to leave your key with a friend or relative or let the landlord make repairs when you are gone.

Remember, if your time schedule forces your landlord to pay more for repairs, for instance having to pay time-and-a-half or double-time to a plumber who could have come during normal working hours, that cost could reasonably be passed on to you.

If your landlord is selling your place, real estate people are subject to the same rules and regulations about entering your property as your landlord.

If you are having problems with landlord entry, write a letter to your landlord and explain exactly when people can and cannot come over to your house and how much advance notice you must have. Give phone numbers for reaching you.

You should not refuse “reasonable entry,” neither should your landlord use the right of entry to harass you.

If a tenant continues to have trouble with illegal entry by the landlord, the tenant has the right to get a court order to stop the landlord or to give notice and move. The tenant also has the right to recover actual money losses.

Likewise, if a tenant continues to illegally refuse entry to a landlord, the landlord can get a court order to enter or can evict the tenant, recovering actual money losses from the tenant.

TENANT RESPONSIBILITIES



A tenancy is a two-way street, and you as a tenant should do all you can to meet your responsibilities. Just because you know your rights, you should not unnecessarily agitate your landlord.

Always try to work out your problems first. It's never wise to start off as adversaries. Outside people (courts, inspectors) should only be used when you can't work things out with a stubborn landlord.

You are responsible to:

Pay your rent on time and in full. This should seem obvious, but it is more important than you might realize. When tenants are not paid up on their rent, they lose a number of rights otherwise guaranteed by law. In addition, you take the chance of receiving an eviction notice for non-payment of rent. Landlords also claim that time spent trying to collect rent is time they can't spend on repairs, maintenance, etc.

Keep the parts of the building you rent (including appliances) as clean as the building's condition allows. Your landlord may not do anything to improve your conditions if you don't try yourself.

Be a good neighbor. Try to get along with other tenants. You are, in addition to your own actions, responsible for those of your family, your friends, your friends' friends – any person or animal at your home with your express or implied consent. Any damage or trouble caused by these other parties can be held against you. Remember, everyone has a right to the peaceful enjoyment of the property.

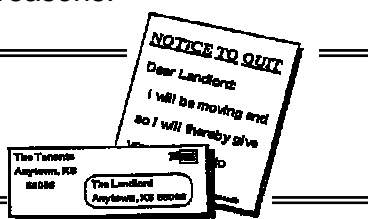
Check with your landlord before you make any modifications or improvements, such as shelves or carpet. Unless you make some other

arrangement, anything attached to the property stays with the property by law or the landlord can require that the place be returned to its original condition. The time to ask is before the carpet you bought is tacked to the floor, not after. Again, be sure it's in writing.

Check before having a roommate move in or before getting a pet since both would be changes in your original agreement.

Notify your landlord if you plan to be away from your house or apartment for more than a few days. Many leases require this and it's a good idea for security reasons.

TERMINATING THE TENANCY



The state of Kansas has established specific procedures for terminating a tenancy and does not recognize any others. **GIVE OR GET PROPER WRITTEN NOTICE EVEN IF YOU HAVE NOTHING ELSE IN WRITING WITH THE LANDLORD!**

You are required to pay for all the time you live in the home, whether you are evicted or not. Tenants are not protected from eviction because of illness or pregnancy in the household.

Leases vary. If you have a lease, read it carefully for notice and renewal requirements. Leases can require less than the normal 30 days notice (some do!), they can also require more. As long as the notice requirement seems basically fair and equitable (not “unconscionable”), a court would likely uphold it.

Delivery of Notices Kansas law generally recognizes delivery of notices when they are:

- 1) hand delivered to the person or to someone over 12 years of age who lives at the person's address,
- 2) posted in a conspicuous place at the person's address, or

- 3) mailed to the person's address.

It is always good to have a witness or other proof (verified photo, certificate of mailing, etc.) of whatever method you choose.

NOTICE TO THE LANDLORD

30 days notice in writing in advance of a rent due date is required in all month-to-month tenancies. Your planned move-out date should be specified. You do not have to state a reason.

30 days written notice from any date must be given when a written lease with a term longer than month-to-month requires 30 days notice but does not specify that notice must be from rent date to rent date.

Week-to-week tenancies require at least 7 days' written notice in advance of a move-out date specified in the notice. If your rent period is two weeks-to-two weeks, 2 weeks written notice is required.

Military personnel with month-to-month written or verbal agreements are required to give only 15 days written notice if termination is necessary because of orders to relocate (per Kansas law).

Military personnel with a long term lease who receive relocation or activation orders, under the Servicemembers' Civil Relief Act (a federal law), are responsible to give written notice, pay rent for the month in which written notice is given, and pay one additional month's rent. Dependents living in the residence with the servicemember are also covered by the Act.

14/30-Day Notice of Landlord Noncompliance is given when there is a problem the landlord must resolve to ensure the tenant will stay. These notices must be for at least 30 days and end on a rent due date (See Tenant Remedies section in this chapter.)

NEW TERMS AT TERMINATION

If you give notice of termination and the landlord asks you to sign paperwork that contains additional terms not included in the rental agreement, Kansas law requires that the paperwork include the following statement in 10-point bold face type:

‘YOUR SIGNATURE ON THIS DOCUMENT MAY BIND YOU TO ADDITIONAL TERMS NOT IN YOUR ORIGINAL LEASE AGREEMENT. IF YOUR LEASE REQUIRES YOU TO GIVE WRITTEN NOTICE OF YOUR INTENT TO VACATE, YOU HAVE THE RIGHT TO DECLINE TO SIGN THIS DOCUMENT AND TO PROVIDE WRITTEN NOTICE IN ANOTHER FORM.’

If the above statement does not appear in the landlord’s paperwork, a tenant’s signature will not bind the tenant to any additional terms that are not contained in the original rental agreement.

NOTICE FROM THE LANDLORD

30-day notices, week-to-week notices, and lease notice requirements from landlord to tenant are the same as they are from tenant to landlord. (See Notice to the Landlord section earlier in this chapter.)

14/30-Day Notice of Tenant Noncompliance can be given to the tenant as long as the landlord clearly states the specific reason or reasons why a tenant might be evicted and allows 14 days to fix the problem/s (if the problem/s can be fixed) to prevent the eviction. Unlike the similar notice from tenant to landlord, Kansas law does not tie the Notice of Tenant Noncompliance to rent-paying dates; they can be for any 30 day period.

3-Day Notice for Nonpayment of Rent If you are behind in your rent, you may be served with a **3-Day (72-hour) Notice**. This notice must state in writing that you have 3 days, 5 days if the notice was mailed, to either pay your rent (it should say how much rent is due) or move out. If you do neither, your landlord can bring suit against you in court both for the money owed

and to order you to move out. Check your lease, if you have one, to see if it requires more notice than this in such situations. The landlord is free to give more time, but 3 days/72 hours is the least amount of time Kansas law allows.

The landlord is legally required to accept the money if you offer the **full amount within the notice period**. The landlord does not have to accept partial payments or payments offered after the notice period has ended. Get a dated receipt for whatever you pay. If you have all the money in time but you think the landlord may try to refuse it, take a witness with you so, if necessary, that person can testify that you tried to pay.

If you are going to try to work out a payment plan with your landlord, think through your budget carefully and honestly and don’t offer more than you reasonably can expect to pay. If the landlord agrees to a payment plan and agrees to drop or extend the time on an eviction action, it would be best to get the agreement in writing for the protection of both of you. Once again, it might be a good idea for you to have a witness along in case promises are made but you can’t get them in writing.

EXCEPTIONS to the rules include situations where the landlord never rented to the person in the first place, where life-threatening circumstances require that a property be vacated immediately, and where a lease simply ends.

REASONS In Kansas, a landlord is generally not required to give a reason for asking a tenant to move out. However, if your lease says the landlord has to give a reason, you can insist. Government subsidized housing requires “good cause” (a reason or reasons) to be stated in writing for an eviction. Also, retaliatory evictions are illegal whether a reason is stated or not. (See Retaliatory Evictions section in this chapter.)

ILLEGAL ACTIVITY

Due to increased concerns about **crime-free and drug-free housing**, many rental

agreements now contain provisions or addendums that make any criminal activity, including drug-related criminal activity, a lease violation (see 14/30-Day Notice of Tenant Noncompliance in this chapter) and grounds for termination of the tenancy. These generally refer to the tenant, any member of the tenant's household, guests, or other persons the tenant has allowed around the property.

These lease provisions usually apply whether the activity occurs on or near the property. They sometimes also apply when someone who lives in or frequents the property gets caught committing a crime or drug activity elsewhere. The addendums apply to arrests as well as convictions. These evictions have been upheld by courts.

EARLY TERMINATION

Peoples' circumstances do change from time to time. Suddenly and without warning, a better job may open up for you out of town or you may find that your mother has fallen and is no longer able to take care of herself. Maybe your landlord sold his house sooner than he expected and now he needs to move into yours. In situations like this, you and your landlord should try to work something out.

Possible compromises if you are going to move out early might be that you would run an ad and do everything you could to re-rent the place so that your leaving would cost the landlord as little time as possible and no money. Or, if the landlord wants you out early, he or she could give you the month's rent free or pay your moving expenses. If you can work out a compromise that satisfies both of you, the law will respect your "good faith" agreement. If not, then the "letter of the law" will still bind both of you.

It is commonly accepted that a landlord cannot collect double rent. So, even if you couldn't work out a compromise and you left early, if the landlord gets the place re-rented, he or she must refund the rent you paid in advance for the time the new people are there.

Also, a landlord has a responsibility to lessen or "mitigate his damages" which means once a

landlord receives notice that you are leaving, he or she must make reasonable efforts to re-rent the property. So, as soon as you know you are going to leave a place, give the landlord a written notice immediately saying what day you are moving and keep a copy. That way, a landlord can't say he or she didn't know you were moving and can't just leave the place empty on purpose and try to collect rent from you.

You may want to keep track of who applies and what happens. If you find a good applicant, you could personally take him or her to meet the landlord. In apartment buildings, you want to know if the landlord is showing or making available your place along with the other available units. An applicant should be free to choose from all available units.

If the landlord is making reasonable efforts to re-rent at a fair rental value, you still owe rent until a new tenant is found, for another month or two, for several months, or possibly even until the end of your lease. Rent is owed as it comes due, not the full remainder of the lease in advance.

If the landlord fails to try to re-rent the dwelling, or the place is in really bad condition or overpriced, or the market is simply bad, it is not uncommon for a court to award a landlord only a month or two of rent even if there was a lease.

ILLEGAL EVICTIONS

There is only one kind of "forcible" eviction which is legal. The landlord must give the tenant a proper eviction notice, take the case before a proper court, get a judgment against the tenant, and then, if the tenant still doesn't move, wait for the sheriff to evict the tenant. All other methods are illegal.

Illegal methods (also called "constructive evictions," "unlawful removal") include such self-help measures as locking the tenant out, taking the tenant's belongings and putting them in storage or throwing them away, and shutting off the electricity, gas, water, or other essential services. If

a landlord resorts to such measures, the tenant may recover possession or end the rental agreement. If you decide to move out, the landlord must return whatever amount of the security deposit you are entitled to collect. In either case, Kansas law provides that the tenant may also recover an amount equal to 1½ times the monthly rent or actual damages, whichever is greater. In a Kansas Supreme Court case, the tenants were awarded \$1000 in “punitive” damages in a similar situation.

If the landlord illegally locks you out, you may get back into the rental unit if you can do so without damaging the property. You can call a locksmith to get back in. If you have to stay someplace else, eat out and/or have to replace personal items until you can get back in, keep track of all the expenses the landlord’s action costs you. Personal safety should always be the primary consideration.

The Landlord-Tenant Act is civil law. However when a landlord acts to force you out without following the proper process, you can call the police, file a report, and file charges under criminal law. A landlord can be charged with Criminal Deprivation of Property if you have been barred from entering or Theft if your personal property has been removed.

RETALIATORY EVICTIONS

No tenant should be afraid to demand that the house he or she rents be maintained in a livable condition. Many tenants, however, do hesitate to confront their landlords. They say, “Landlords know how to get rid of tenants who complain.”

This is not right and both the state of Kansas and at least one city (Topeka) have laws to prevent this. Kansas law says it is unlawful for any landlord to force you to move out by raising your rent or decreasing your services (e.g., stop paying some of the utilities, stop doing some regular maintenance) after you have:

- complained to the landlord because needed repairs are not being made;

- asked a governmental agency to inspect and/or complained to a governmental agency who can force the landlord to make repairs; or
- become active in a tenant organization.

Interpretations of this law, as well as common law, say that landlords can’t evict you for these reasons either.

Topeka’s ordinance specifically says that landlords can’t evict, raise rent, or cut services within six months after tenants do any of the three things listed above. The ordinance is enforced by the City Attorney’s office and provides a “cooling off period” for tenants and landlords.

An important thing to remember is that, for the law to protect you, you need to be paid up in your rent, continue paying rent during the time of your complaints, and otherwise be a “good tenant” (keep the place clean, don’t bother the neighbors, etc.). Also, if the house can’t be repaired with you in it, you may have to move, at least temporarily.

Both state and city laws that provide protection from retaliation can be used as a defense by the tenant. In court, your landlord would be asked to justify his or her action. You would need to be prepared to prove that:

- you always paid the rent on time.
- if the landlord claims that you were sometimes late with the rent, the landlord accepted this late rent without comment (if true).
- you truly did ask a number of times for repairs; hopefully you will be able to show copies of the notes and letters you sent to your landlord.
- your complaints were valid and the problems were not caused by you.
- you have been a good tenant and the landlord has no good reason to evict you, raise your rent, or decrease services.

ABANDONMENT

Under Kansas law, a rental unit may be considered abandoned if the tenant:

- (1) is at least 10 days late with rent,
- (2) appears to have removed a substantial portion of the tenant's belongings, and
- (3) did not tell the landlord that he or she intended to stay.

DISPOSAL OF PERSONAL PROPERTY

Where there has been an abandonment, or where the tenant has been removed as a result of an eviction action, or where a tenant has moved out but has left items of personal property at the rental unit, Kansas law says that the landlord may sell or dispose of the tenant's property if he or she does the following things:

- (1) Holds the property for at least 30 days, giving the tenant the right to redeem if outstanding debts are settled.
- (2) Puts an ad in the paper at least 15 days before the sale or other disposition of the property. No later than 7 days after the ad is published, the landlord must send a copy of the ad to the tenant at the tenant's last known address (an important reason for a tenant to file a change of address with the post office).

So, if your landlord is legally holding your personal property, you have a chance to claim the items by contacting the landlord before the 30 days are up and paying what you owe. This amount may include the cost of packing and storing your property, plus court costs, plus rent or other amounts you owed when you moved out.

NOTE: Though landlords can refuse to release possessions if the tenant cannot pay, some landlords prefer to let tenants have their property simply so they are gone and there is no further hassle with them. It's up to the landlord; but if you left things you really want, you should at least talk with him or her.

IF YOU DON'T MOVE OUT

If you aren't out at the end of a notice, you become a "holdover tenant" and are probably

in trouble if you didn't work out something with your landlord. Under Kansas law, the landlord cannot personally put you out on the streets or cut off your utilities, but there are some legal steps that can be taken which can be pretty bad for you.

First, your landlord has the right to collect rent from you for every day you are in the property as well as up to 1½ times a month's rent or 1½ times actual damages, whichever is higher, because you remained in the property when you were supposed to be out. This is especially bad when new tenants are waiting to move in. If they can't get in, they can sue your landlord for failure to deliver the unit as promised, then the landlord can sue you for their damages plus his or hers.

Second, you will probably end up going to court with the landlord trying to get both possession of the property and money from you.

EVICTION – COURT

Your landlord begins the eviction process by serving a proper notice. (See Notice from the Landlord section earlier in this chapter.) If you do not comply with the notice, your landlord may start the court process to remove you from the rental property and to collect any money that is due.

You will be notified that your landlord has filed suit against you by receiving a summons from the court stating the charges against you and what day you and/or your attorney must appear. It is important that you or your attorney appear in court on that day. State law does not require you to be represented by an attorney; however, it is advisable. If neither of you appear and the hearing has not been postponed, you lose your case by default and a judgment is immediately made against you.

Where the landlord is suing you for nonpayment of rent, Kansas law says that you must bring up any counterclaims you have the first

time you go to court or you can never claim those damages later. **MAKE SURE YOU OR YOUR ATTORNEY FILES YOUR “ANSWER” IN WRITING, FOLLOWING THE INSTRUCTIONS PROVIDED WITH THE SUMMONS.**

Otherwise, the judge may not be willing to listen to your defense or counterclaims. A well-presented and well-documented defense and appropriate counterclaims may enable you to win your case on some or all points.

Sometimes there is more to an eviction suit than simply determining who should be in possession of the property. For instance, if you feel the landlord is retaliating against you (see Retaliatory Evictions section earlier in this chapter), you should bring that up. That could cause the judge to throw out the eviction suit altogether. You may also want to present counterclaims for damages and back rent because of health hazards on the property, such as cockroaches, water damages, no heat, etc. (See Warranty of Habitability section earlier in this chapter.)

The first court date, docket call, is basically to see if the tenant is still in the place and if there is still a dispute. You will be asked if you agree, disagree, or plead no contest to the charges. If you disagree or propose counterclaims, a date will be set for trial. The trial date must be set within 8 days of your first court appearance.

If you work out an agreement with the landlord before or at your court date, be sure to get a written statement with the landlord’s agreement to stop the eviction. The court will not stop an action unless the party that filed tells them to. To be safe, you should check with the court before the court date or appear on the court date with proof of your written agreement.

EVICITION – GETTING OUT

If you lose the case, or even if you win on some points but the judge says that the

landlord can have possession of the place back, you will need to move. Judges may award “immediate possession” to the landlord, may give you a certain amount of time to be out, and can order the sheriff to assist the landlord if you don’t move. The sheriff’s department, by law, has up to 10 days to get you out, but it can happen sooner. If your situation ever gets that far, you really should try to move out yourself.

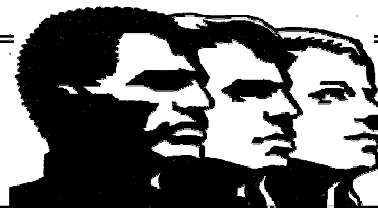
If you do not move out, what typically happens is the sheriff shows up and makes whoever is in the dwelling leave the property, bars them from coming back, and allows the landlord to change the locks – leaving your possessions in the rental unit. Personal property still in the rental after an eviction action is to be treated the same as when the tenant abandons the rental leaving property behind.

To get your things, you may have to pay the moving and storage expenses, probably the court costs, and maybe all of the money (if any) the judge decided you owed your landlord.

It may be asked, “Why bother going to court if you will probably lose anyway?” First, there is always the possibility you may win on some or all points. For instance, you might win a partial reduction in money owed for back rent. The judge could accept your “Warranty of Habitability” claim. You can defend yourself from false amounts being charged against you. Another, and perhaps more important, reason is that, if you need it, valuable time is won through the court process. If yours is a valid defense, you can come out ahead and use this time to search for another home.

If judgment for money is given to the landlord, he or she can collect by garnishing your bank accounts and/or wages. (See Collecting a Court Judgment section in Small Claims Court chapter.)

DISCRIMINATION



Basically, all prospective and current tenants must be treated equally. Federal fair housing laws extend protection to persons in all of the United States. **Federal laws extend protection from discrimination on the basis of race, sex, religion, national origin, ancestry, color, familial status, and disability.**

Familial status refers to families with children under the age of 18 and women who are pregnant. Under fair housing law, landlords cannot refuse to rent to families with children. However, a landlord may limit household size to his or her standard limits and is protected by the occupancy limits in any local housing code. Buildings or complexes which meet certain guidelines for operating exclusively for senior citizens are the only ones which can exclude families.

Disability is broadly defined to include anyone who has or is regarded as having a physical or mental disability (protects people with illnesses such as AIDS, specifically does not protect people with substance abuse problems). Landlords must allow physically disabled tenants, at their own expense, to make “reasonable” modifications to a rental unit to make it accessible. (The landlord does have the right to insist on certain standards of workmanship and, in some cases, on restoration of the property to its original condition at move-out.) All new rental construction with 4 or more units must be “accessible” or “adaptable” for disabled persons.

Fair housing laws cover the specific decision to sell or rent to certain persons or classes of people, as well as issues such as charging higher rent or establishing different requirements, conditions, or services. They cover the individuals involved as well as situations

involving families or guests. They also say that legally landlords cannot threaten you, intimidate you, or otherwise retaliate against you if you stand up for your rights.

Kansas state discrimination laws are in compliance with federal laws. Some local governments provide protection for additional groups such as marital status, age, and sexual orientation.

Enforcement procedures in discrimination cases include the use of administrative law judges, the power to get injunctions, and the power to secure awards of up to \$100,000 for fair housing complaints handled through administrative or federal court procedures.

If you think you have been discriminated against, you should definitely check out your rights and consider pursuit of a complaint either directly with your landlord or through the appropriate authority. If it's too late to make the situation better for yourself, you may be able to make it better for the next person. The following details the various levels at which fair housing complaints may be filed, along with the powers and procedures for each.

LOCAL GOVERNMENT

GROUPS COVERED: Race, sex, religion, national origin, ancestry, color, disability, and families with children, some local ordinances add marital status, sexual orientation, age, and welfare income.

WHO INVESTIGATES: Volunteer board members or paid staff.

LIMIT TO FILE: Varies. Generally 180 days.

POWERS: (1) Voluntary conciliation agreements.

(2) Public hearings before volunteer boards, legal counsel often available. Ability to order injunctions. Limits on awards will vary.

Enforcement assistance from and appeals to District Court should be applicable, but may vary based on specific local ordinance.

HOW TO CONTACT: Call City Hall and inquire about “Human Relations,” “Human Resources,” or “Civil Rights” board or staff.

STATE GOVERNMENT

GROUPS COVERED: Race, sex, religion, national origin, ancestry, color, disability, and families with children.

WHO INVESTIGATES: Paid staff, based in Topeka, Dodge City, Independence, and Wichita, who travel the entire state.

LIMIT TO FILE: 1 year.

HOW SOON INVESTIGATION MUST START: Respondent must be contacted within 10 days, investigation completed within 100 days, if possible.

POWERS: (1) Voluntary conciliation agreements.

(2) Hearings generally held in the city where the complaint was filed. Administrative hearings, option of using staff attorney or private counsel. Staff hearing examiner can award actual damages and “pain and suffering” damages, no limit, fines up to \$25,000.

Decisions are enforced by or appealed to Kansas District Court.

HOW TO CONTACT: Kansas Human Rights Commission has four offices in Kansas. Education specialists are available to answer questions. You can obtain a copy of the

Kansas Act Against Discrimination upon request or at www.khrc.net along with an on-line complaint form. Complaints may be filed at any office. Contact information:

Topeka Office:

900 SW Jackson, Suite 568 South
Topeka, KS 66612

Phone: (785) 296-3206, Toll Free: (888) 793-6874
FAX (785) 296-0589

Dodge City Office:

100 Military Plaza, Suite 220
Dodge City, KS 67801

Phone: (620) 225-4804
FAX (620) 225-4986

Independence Office:

200 ARCO Place, Suite 311
Independence, KS 67301

Phone: (620) 331-7083
FAX (620) 331-7135

Wichita Office:

130 South Market, Suite 7050
Wichita, KS 67202

Phone: (316) 337-6270
FAX (316) 337-7376

FEDERAL GOVERNMENT

GROUPS COVERED: Race, sex, religion, national origin, ancestry, color, disability, and families with children.

WHO INVESTIGATES: Paid Department of Housing and Urban Development (HUD) staff who are based in area or regional offices and travel as needed.

COST: None for investigation; might be some for witness fees or court costs, can be waived if complainant cannot afford.

LIMIT TO FILE: 1 year.

HOW SOON INVESTIGATION MUST START: Respondent must be contacted within 10 days, investigation completed within 100 days, if possible.

POWERS: (1) Voluntary conciliation agreements.

(2) Administrative hearings. Complainant assisted by HUD investigator and HUD legal counsel, before HUD administrative law judge. Power of injunction, right to award actual damages and attorneys fees, fines up to \$50,000. Hearings are to be held “in the vicinity” of where the complaint occurred.

(3) Federal District Court, by request. Justice Department represents complainants before federal judge and/or jury. Power of injunction, right to award actual damages and attorneys fees, fines up to \$100,000. Federal courts in Kansas are in Kansas City, Topeka, and Wichita.

HOW TO CONTACT: Call (800) 669-9777 for national information, or

Great Plains Regional HUD Office
Gateway Tower II
400 State Avenue, Room 200
Kansas City, Kansas 66101-2406
(913) 551-6958, Toll Free: (800) 743-5323
TTY (913) 551-6972

PRIVATE ATTORNEY

GROUPS COVERED: Any covered by local, state, or federal law, or other policy or regulation.

WHO INVESTIGATES: Varies.

COST: Negotiable, can be high, can be low or “contingency fee.”

LIMIT TO FILE: Federal law allows up to 2 years for private lawsuit; Kansas and local law may vary, up to 5 years depending on nature of lawsuit.

HOW SOON INVESTIGATION MUST START: Varies. Can take some time to prepare case and

get through various court systems. In the past, however, there have been times when this was faster and more effective than using government procedures.

POWERS: No limit on settlements, all administrative procedures, no limit on penalties requested or awarded.

HOW TO CONTACT: Check with local, state, and federal courts for names of attorneys who have been involved in discrimination cases; check with local and state bar association “lawyer referral” programs; check the internet; contact libraries or human relations boards for names of attorneys nationally who have been successful in fair housing lawsuits.

THE RULE OF THUMB: If you have a complaint check with local, state, and federal levels of government or private attorneys to see:

- (1)** whether your particular complaint is covered,
- (2)** how quickly they are required to act on and settle complaints,
- (3)** how close the administrative or court hearing would be to where you live, and
- (4)** what powers and authority they have to get money or other judgments.

Another wise move can be to file your complaint with all levels of government. Generally, government agencies will defer down to the most local agency that has authority in your area. However, by filing in a timely manner with everyone, if you are not satisfied with the investigation at one level, you can ask the next to assist you. Because all government levels have time limits that you must meet for filing, if you waited for one investigation to finish and were dissatisfied, it might be too late to file with the next.

HOW TO SHOP FOR AN ATTORNEY

When shopping for an attorney for a landlord-tenant case, you want someone who will take care of your business quickly and inexpensively and who will win – right!? Because landlord-tenant cases usually do not involve a lot of money, many attorneys are unfamiliar with that area of the law. Even your family or business attorney may not be the best person for you. It pays to shop around!

Things to look for:

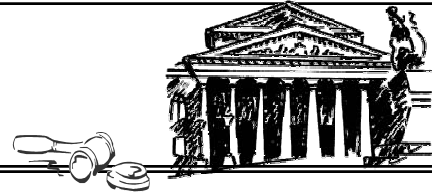
- **Landlord-Tenant Case Experience.** How recent? How much? Landlord-tenant law is complex. It will pay you in time, money, and success to hire someone who is already familiar with it.
- **Courthouse Time.** Is the attorney there often? In most landlord-tenant cases there are many papers to be filed and speed is important. If your attorney is often at the courthouse anyway, speed should not be a problem and it shouldn't cost you extra.
- **Initial Consultation.** This is crucial if you don't know the attorney or he or she has not done this type of work for you before. Many attorneys charge nothing or a small charge for a first consultation. Remember, you are hiring this person, not the reverse. If you don't like the person or feel he or she is not interested in your case, keep looking!
- **Estimated Fees.** Get a written estimate of what this process should cost you. Some attorneys have basic flat rates on routine processes such as evictions. Most will charge by the hour but can still estimate what the total should be.

You can check out the first two items by phone. Then, just as if you were getting bids on a major purchase or repair, you might want to plan to interview three attorneys who sound like they might meet your qualifications.

Save Money. You can help keep your costs down by being sure to bring with you any documents, letters, or reports related to your situation. It may be helpful to write out the facts of your case in chronological order and bring that with you as well. Also write down your questions ahead of time and be prepared to provide names and addresses of all parties involved. These steps may save on the lawyer's time (and thus cut down on legal fees). Note: All communications within the attorney-client relationship are *confidential*, even if you decide not to hire the lawyer after all.

If you run out of possible names or don't have any in the first place, you can call **Lawyer Referral Service** at (800) 928-3111. They will give you the name of an attorney in your area who has indicated that he or she does your kind of case (fees range from \$100-\$200 per hour). For advice only, you will be connected with an attorney on the **Lawyer Advice Line** (charges are \$3 per minute and can be charged to MasterCard, VISA or debit cards). If you are over 60, you can contact the **Kansas Elder Law Hotline** at (888) 353-5337 for a referral to an attorney in your area who is paid with public funds to provide legal consultation (maybe not representation, but at least advice) to senior citizens without charge.

SMALL CLAIMS COURT



Small Claims Court exists to provide a forum for the speedy trial of fairly simple claims at a minimal cost.

WHAT IS A SMALL CLAIM?

A small claim is defined in Kansas as a claim for recovering money or personal property from an individual, a business, or an organization where the amount involved is \$4000 or less. It is especially useful for the collection of a security deposit from a landlord, a decision on who would pay a disputed repair bill, settling money disputes between roommates, or getting your personal property returned. Evictions are not handled in Small Claims Court.

WHO MAY FILE A SMALL CLAIM?

Anyone may file a small claim, but there are some restrictions.

(1) Most important, you represent yourself and the landlord represents himself or herself. No one can be represented by an attorney during a small claims hearing. Exception: The court will allow an attorney to represent himself or herself or a corporation. In such cases, the other party (you) may, but is not required to, have an attorney.

(2) Persons under 18 must be represented by an adult.

(3) You may not authorize a third party to sue on your behalf. (Rare exceptions to this rule can be made with the consent of the judge in situations where, for instance, a person is senile or is otherwise unable to represent himself or herself.)

(4) Collection agencies cannot use the Small Claims Court to secure payments for their clients.

(5) No person or entity may file more than 20 small claims in any calendar year in any one county.

HOW DO YOU FILE A SMALL CLAIMS SUIT?

A small claims suit should be filed in the county where the landlord resides or has a place of business or where the incident in question took place. Some courts will allow you to file on someone outside the county but within the state of Kansas; some will not. If your case is against someone who is out of state, you may not be able to use the Kansas small claims procedure.

To start a small claims suit, you must fill out a form provided by the clerk of the court. To find the right office, look for a sign in the county courthouse saying Small Claims or Limited Action or District Court.

The form you fill out is not complicated. You must simply list your name and address, the defendant's name and address, and state your claim. After you have completed the form, return it to the clerk and pay a filing fee which may range from \$30 to \$50 depending upon the amount of the claim and the county you are filing in. The judge may waive this fee if you submit a Poverty Affidavit form showing that you cannot afford it. You must sign the form in front of the clerk, or, if you file by mail, you must have it notarized.

If your landlord is a corporation, list any name you think is legally involved. Often, this will include the name of the corporation (include owner and management company, whatever names you have been given), the name of the complex, and the name of the current manager or agent. For the address, list the one(s) in the county where you are filing.

If you want to find the person who will accept legal papers for a corporation, search at www.accesskansas.org/srv-corporations/compressed.do. Enter the name of the corporation. The Secretary of State's records will show a name and address for the Resident Agent. Service of papers on that person gets the corporation into your lawsuit.

The clerk will assign a date and time for your claim to be heard. The sheriff or some other person authorized by the court will serve a summons on the defendant to notify him or her of the court proceedings. Individual counties establish the process they will use for delivery of notice.

If you have not heard from the court, check in at least a day before your hearing is scheduled to make sure the defendant was served the court summons. If not, you will need to give the court any clues you can (addresses, times, etc.) on how to find this person. There cannot be a trial until the defendant is notified. A publication process is available if the defendant truly can't be found.

It is important to remember that the person you are suing may bring a countersuit against you. So, know as much as possible about the circumstances involved in your claim.

WHAT IF SOMEONE FILES AGAINST YOU?

You will receive a summons stating that the landlord or someone claims you owe an amount of money up to \$4000 for back rent, damages, or whatever. You can defend yourself if you feel you do not owe the money or countersue if you feel that person owes you money. It costs nothing to countersue unless your claim is over \$4000 and/or you choose to get an attorney and take it to a higher court.

WHAT IF YOUR OPPONENT OFFERS TO SETTLE?

Generally, to "settle" means to make some sort of deal and drop the case from court.

It is advisable to settle only if you have been paid or your items returned in full. (A settlement may include any court costs and interest desired.) If you aren't totally satisfied, you may choose to go to court and get your hearing and official judgment on the entire claim. If a settlement is reached, be sure to get the agreement in writing, stating clearly what has been agreed to. The agreement should be dated, signed by both parties, and both parties should have a copy.

If a case is settled, the plaintiff (person who filed) should notify the court in writing and have the hearing cancelled. Check with the court to see if there is a form that can be filled out and signed; otherwise, a letter of dismissal should be written and delivered to the court. The defendant should check with the court the day before the scheduled court date and make sure the plaintiff did have the case dismissed. When in doubt, you should appear at the appointed date and time for your own protection.

WHAT PREPARATION IS NECESSARY BEFORE GOING TO COURT?

Make sure you have all materials and papers that are important to your case. It is important that you write down all of the facts of the case before the hearing and take them with you. You should not expect to read this at the trial, but it can be an important reference so you don't forget any details or dates when you are speaking to the judge.

Be sure to inform any witnesses you have of the date and time of the hearing. It is up to you to see that they are there. Witnesses can be subpoenaed by the court. However, if the court calls them, you will have to pay a witness fee. Depositions (signed statements from witnesses) are not allowed.

If you need more time to prepare your case or if for some very important reason (such as serious illness) you, as either plaintiff or defendant, cannot make it to court on the day of your hearing, you must request a "continuance" from the clerk or judge at Small Claims Court. This must be

done as far in advance as possible. Although everyone has a legal right to one continuance, the court may set a deadline (usually a day or two before) after which time none will be granted. If you fail to ask for a continuance and do not appear in court for the hearing, you may lose your right to be heard by the judge and may automatically lose your case.

WHAT HAPPENS IN COURT?

Be sure you appear in court on the date and time assigned by the clerk. Get there early! If you are not present, your side of the case will not be heard and your opponent will win.

At the hearing, the claim is heard by a judge. There is no jury. You and your opponent represent yourselves.

The only information the judge should have ahead of time is the original claim form and possibly a counterclaim form (though counterclaim forms can be turned in at the trial).

The procedure is very simple. You present your side of the story to the judge. In doing so, you show any evidence and call any witnesses you have to testify. The judge may then ask questions of you and your witnesses. Your opponent will be asked to present his or her case and any claim that he or she may have against you. When your opponent is finished, the judge may question you, your witnesses, your opponent, and your opponent's witnesses.

SOME HINTS!

You may want to prepare an opening statement – one or two sentences that summarize your side of the case – and practice it in advance.

When presenting your case, make your statements short and present any pertinent documents.

If you have witnesses, take them with you when your case is called. If you don't, they may never be called forward by the judge. It is important to answer the judge's questions directly and in a calm manner.

Speak clearly, directly, and only when spoken to. If you must interrupt or insert a point, do it as politely as possible. Never be rude to the judge or your opponent either in speaking or by making gestures or faces.

You might consider going and sitting in on Small Claims Court before your hearing date. Every Small Claims Court hearing is public. By attending at least one session in advance, you will know how small claims cases are handled by the court and the judge in your county. The clerk's office can advise you when a landlord-tenant case is scheduled.

WHAT ABOUT THE RULING?

The judge considers the arguments and evidence and decides the validity of your claim. He or she may award an entire request, part of it, or none of it. If you win, the judge may order your opponent to pay you interest and/or reimburse you for your filing fee in addition to the amount you asked for. The judge may decide that your opponent's claim is more valid than yours and order you to pay money to your opponent.

COLLECTING A COURT JUDGMENT

Winning in court does not necessarily mean that you get paid promptly, in full, or ever.

Payments can be made through the court or directly between you and your opponent. Installment payments are allowed if both parties are willing. Use receipts if you pay or get paid directly.

Your judgment is good almost forever as long as you keep checking in with the court and officially renewing it at least every 5 years or so. After 10 days, assuming no appeal has been filed, the court can assist you in collecting your money. It will be up to you to make sure appropriate papers are filed and to find out where this person's money is. You may hire an attorney or use a collection service to assist at this time.

“Aid in Execution” and “Garnishment” are the two court-assisted collection procedures.

AID IN EXECUTION

You can go back to the court clerk and ask the court “aid” you in “execution” of the judgment. Most courts will provide the necessary form. There should be no cost to you.

The court will send the sheriff or other court-appointed person out with an order summoning your opponent to return to court. You will have to appear too. At the appointed time, the judge will assist you in questioning the person to determine whether a payment can be made immediately to you directly or through the court, whether an acceptable payment plan can be worked out, and/or to discover where the person banks or works so that garnishment can proceed.

This procedure can be used as often as necessary.

GARNISHMENT

In a garnishment procedure, the court gets the money owed you directly from your opponent’s source of income or bank account. You will have to find out where the person works or banks, fill out a garnishment request form with the court clerk, and then the court will contact the business and arrange the garnishment. If you can’t find out whether the person has income, employment, or money, you can ask the court to assist you through an “Aid in Execution.”

The law permits garnishment of 25% of the disposable earnings from each paycheck, though a certain amount must be left in each check garnished. Welfare, social security, and disability checks can’t be garnished. Garnishments continue until the judgment is paid off or the garnishment is released.

A checking or savings account can be garnished in one lump sum. When filing for this type of

garnishment, you must enter 1½ times the amount due on the form.

Give the court a week or so to issue the garnishment. Once a business has received garnishment papers, it should be holding your money. The business must file an answer with the court. The court will send a copy to you. Next, you must sign or call the court for an “order to pay in and disburse.” Then the court will collect the money from the business and send it on to you.

WHAT IF YOUR CLAIM DOES NOT FIT SMALL CLAIMS COURT?

You or a judge may decide that your claim is too complicated for Small Claims Court. You then have three options.

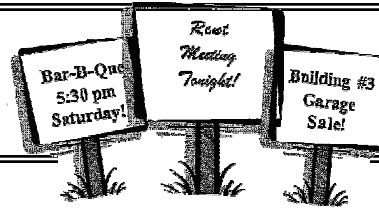
- (1) You can drop the claim. Your filing fee will not be returned.
- (2) You can reduce your claim to fit the limits of Small Claims Court, thereby waiving the right to pursue what you left out. A claim cannot be split into two suits.
- (3) You can go to the next higher court level. There you will probably need an attorney and the fee will be higher if the money requested is over \$4000.

CAN SMALL CLAIMS COURT DECISIONS BE APPEALED?

A judgment made in Small Claims Court may be appealed to the next higher level of the District Court within 10 days. This will give you a trial “de novo” – completely new. You will have to pay court fees again. Hiring an attorney is advisable because of the complexity of the forms and the legal arguments. If you lose a second time, the judge is supposed to order you to pay your opponent’s attorney’s fees.

If you have any questions on how to file a small claim, contact the appropriate court for your county. Small Claims Court is an excellent channel for those who have small claims and cannot afford an attorney. It was created for you to use, so utilize it!

TENANT ORGANIZATIONS



A tenant association is a group of residents who band together for any of a number of reasons. It may be formed by the tenants of a single apartment house, the tenants of a single landlord in many houses, or on a neighborhood basis. Sometimes associations form on a social basis to organize adult or children's activities or just to visit. Sometimes they begin as organizations to make specific complaints against rent raises, evictions, or a landlord's refusal to make repairs. Sometimes they form for security.

Some tenants' associations last for short periods of time while certain people or certain issues are present. Others last over many years and can develop into strong positive bases for neighborhood activities or even community-wide activities such as housing code enforcement or neighborhood improvement.

There is no right way to organize and run a tenant organization because each situation is different. Still, tenant groups should keep a number of things in mind when planning and running an organization.

Information: Information on community resources, landlords, local issues, and politicians means strength for a tenant organization. Information can be used to educate your members and the public. It is essential in decision-making on issues and planning events. It can also aid in obtaining public support and providing better defense in legal situations.

Recruiting: Try and get people who are known by a lot of tenants to help get people out to the meetings. One-on-one personal or telephone invitations are the best. Offer people rides. Organize first on small problems which have solutions or limited activities so that your group has early successes.

Social/Security: One of the most effective ways to improve security in any neighborhood is to

have the neighbors know one another and look out for one another. So, social activities and interactions among tenants can make for a more secure complex and better living arrangement for everyone.

Meetings: People come to meetings for a variety of reasons – issues, fun, social. Potluck dinners or other ideas can increase attendance. Set meeting times carefully to avoid conflicts with work, social events, school events, popular TV shows, etc. Meeting places should be close and easy to get to. Sitting in a circle for informal meetings allows everyone to see each other. A sign-up list allows individual tenants to list their problems and/or interests and also serves as a future reference and volunteer list.

The point of the meeting is to get something done, build interest, and build commitment; people should want to come back. Agendas should be prepared in writing and followed. Avoid "What do you want to do?" statements, but have suggestions for how to proceed on problems or activities. Encourage participation by many. Share all information so that people feel like they know what's going on. Open discussion of issues that are not central to the work that needs to be done should have a limited time allotted and should come at the end of the meeting.

Everyone should leave the meeting with something to do. Form working committees for future activities. This reinforces commitment and will give members an opportunity to brag at the next meeting (if they have done what they said they would) or feel group pressure (if they have not).

Roleplaying: Take the part of each of the characters in a situation, either in your head or with the group. It can be a lot of fun, and, taken seriously, very instructive. Whether you are just trying to get more people in your building or

neighborhood out to events that you have planned or whether you are trying to plan arguments, tactics, and overall strategy in a major issue, understanding the point of view from the other side can be helpful.

Tactics: Tenant group tactics can include letters, negotiation, events in public places, meetings, and, in extreme cases, such methods as picketing or rent strikes. All activities should be carefully and sensitively selected, timed, and directed to meet the specific needs, goals, and objectives established by the tenants' association.

Legal Help: Lawyers are a necessary aid to any tenant group that is pursuing tenants' rights issues. They can buy time, give advice, and even win key cases. They may also serve as advocates in seeking changes in the law in legislatures and city councils. However, the lawyer's role should be no more than that of a

technical advisor who gives members legal information about what might happen to them if they try certain specific tactics. It is imperative that the tenants decide whether their action in a controversy will be moderate or militant.

Publicity: Leaflets, posters, and newsletters are basic methods of keeping tenants informed about the group's activities and accomplishments. Telephone "trees" are also very effective.

TV, radio, and newspaper coverage will also be helpful, but the media cannot substitute for the basic methods listed above.

Community Support: Every community group should be aware of the benefit which comes from exchanging advice, support, and resources with other groups. However, do not try to pattern your tactics or activities to be exactly like others. No two organizations are the same; you must look inward for your own direction.

LEGAL REFERENCES

The term "K.S.A." refers to the **Kansas Statutes Annotated**. In book form, these Kansas laws are available at most libraries and often can be found at business and government offices. They are also available at www.kslegislature.org. Do a statute search using the numbers listed here. Copies of the Kansas Residential Landlord and Tenant Act (K.S.A. 58-2540 through 58-2573), Mobile Home Parks Residential Landlord and Tenant Act (K.S.A. 58-25,100 through 58-25,126) and other items noted below can be ordered from Housing and Credit Counseling, Inc. Listed by order of appearance in this handbook:

Definitions – K.S.A. 58-2543, 58-25,103

Before You Rent – Fraud on Applications, Landlord remedies, K.S.A. 36-206 and 36-207; **Kansas Fair Credit Reporting Act**, 50-701 through 50-722; **Fair Credit Reporting Act**, 15 U.S.C. § 1681; **Possession**, 58-2552, 58-2560; **Metering**, 58-25,127.

Security Deposits – K.S.A. 58-2543, 58-2550, 58-2554, 58-2562, 58-2563; 1979 Kansas Supreme Court case Clark v. Walker, Forfeiture provisions; 1982 Kansas Court of Appeals case Buettner v. Unruh, When move-in inventory was not done; 2001 Kansas Court of Appeals case Wurtz v. Cedar Ridge, Landlord can't keep security deposit as liquidated damages.

Leases/Rental Agreements – K.S.A. 58-2543 through 58-2547, 58-2549, 58-2551, 58-2556, 58-2558, 58-2565; **Subleasing** 58-2511, 58-2512, 58-2515; **Disclosure of Ownership**, 58-2551, 58-2554; Kansas Contract Law (not detailed here) also applies; 1975 Kansas Supreme Court case Chelsea Plaza Homes, Inc. v. Moore, Kansas Residential Landlord and Tenant Act applies instead of Kansas Consumer Protection Act in Landlord/Tenant issues; Model Leases may be ordered from Housing and Credit Counseling, Inc.

Rules and Regulations – K.S.A. 58-2556

Move-In Inventory – K.S.A. 58-2548; 1982 Kansas Court of Appeals case Buettner v. Unruh, When move-in inventory was not done; Move-in Inspection Forms can be obtained from Housing and Credit Counseling, Inc.

(Legal References continued on following page)

Rent and Late Fees – K.S.A. 58-2543, 58-2545, 58-2564, 58-2566, 58-2572

Landlord Responsibilities – K.S.A. 58-2549, 58-2552, 58-2553, 58-2559; Maintenance Request Form can be ordered from Housing and Credit Counseling, Inc.

Housing Codes – Check at your City Hall. Ask for Housing Code or, if that doesn't work, try for something with "Property" or "Maintenance" or "Occupancy" in the title

Fire Codes – Check with your Fire Department or City Hall for local codes. Call the Kansas Fire Marshal at (785) 368-4026 or visit www.state.ks.us/firemarshal/stats and regs for a lengthy list of fire protection statutes and regulations; **Kansas Fire Prevention Code**, K.S.A. 31-134 through 31-171

Tenant Remedies – K.S.A. 58-2559, 58-2570; 1974 Kansas Supreme Court case *Steele v. Latimer*, Implied Warranty of Habitability

Escrow Ordinances – City of Atchison Housing Code, Article II, Sec. 34-19 and City of Manhattan Housing Code, Article VIII, Sec. 8-178 provide for escrow of rent under certain circumstances. Ordinances are available on the cities' websites and can be ordered through Housing and Credit Counseling, Inc.

Damage or Destruction by Fire or Casualty – K.S.A. 58-2562

Landlord Entry – K.S.A. 58-2557, 58-2565, 58-2571

Tenant Responsibilities – K.S.A. 58-2555, 58-2558, 58-2564, 58-2570

Notice to Terminate from the Tenant – 14/30-Day Notice of Landlord Noncompliance, K.S.A. 58-2559; **Failure to Deliver**, 58-2560; **Damage or Destruction by Fire or Casualty**, 58-2562; **Unlawful Removal**, 58-2563; **30-Day Notice**, 58-2570; **Military Personnel 15-Day Notice**, 58-2570; **Servicemembers' Civil Relief Act**, 50 U.S.C. App. §§ 501-596; **Delivery of Notice**, 58-2564; **New Terms at Termination**, 58-2570; Sample Notices are available from Housing and Credit Counseling, Inc.

Notice to Terminate from the Landlord – K.S.A. 58-2564 through 58-2572; **Court Jurisdiction**, 58-2542; **Tenant's Counterclaim**, 58-2561; **Housing as a Condition of Employment**, 58-2504; **Notice to Terminate Not Required**, 58-2509; **Liens**, 58-2565, 58-2567; **Lock-Outs**, 58-2563, 58-2567, 58-2569; **14/30-Day Notice of Tenant Noncompliance**, 58-2564; **3-Day Notice for Nonpayment of Rent**, 58-2564; **30-Day Notice**, 58-2570; **Abandonment**, 58-2565; **Illegal Evictions/Unlawful Removal**, 58-2563, 58-2569, 58-2572; **Retaliatory Acts Prohibited**, 58-2572, City of Topeka Code 82-272; **Service of Notices**, 58-2510, 58-2550, 58-2554, 58-2562, 58-2563, 61-2907, 61-3003 through 61-3006, 61-3803; **Court process (Forcible Detainer)**, 61-3801 through 61-3808; **Squatters**, 58-2509, 58-2511; **Public Housing "One-Strike" rules**, HUD regulation 24 CFR 966.4; 2002 United States Supreme Court case *Rucker v. Davis* upheld HUD "one-strike" eviction of tenants; 1983 Kansas Supreme Court case, *Geiger v. Wallace*, Wrongful removal, tenant's right to collect damages; 3-Day, 30-Day, and 14/30-Day Notices can be ordered from Housing and Credit Counseling, Inc.

Abandonment, Disposal of tenant's personal property – K.S.A. 58-2565; **Criminal Deprivation of Property**, 21-3705; **Theft**, 21-3701; Kansas Appeals Court cases 1986 *Davis v. Odell*, Landlord's right to dispose of tenant's personal property and 2003 *Statewide Agencies, Inc. v. Diggs*, Landlords right to dispose of personal property acquired through eviction action

Holdover Tenants – K.S.A. 58-2552, 58-2560, 58-2570

Discrimination – Kansas Act Against Discrimination, K.S.A. 44-1001 through 44-1044; local ordinances; federal **Civil Rights Act**, 42 U.S.C. 2000; federal **Fair Housing Act and Fair Housing Amendments Act**, 42 U.S.C. 3601; **Americans With Disabilities Act**, 42 U.S.C. 12101

Small Claims Court – Kansas Small Claims Procedure Act, K.S.A. 61-2701 through 61-2714

Collecting a Court Judgment – Aid in Execution, K.S.A. 61-3604 through 61-3611; **Garnishment**, K.S.A. 60-729 through 60-744

Tenant Organizations – K.S.A. 58-2572; Tenants Right to Organize, 24 CFR (Code of Federal Regulations) Part 245; National Alliance of HUD Tenants link for tenant organization, www.saveourhomes.org; National Housing Law Project, www.nhlp.org

This handbook was produced in accordance with the Kansas Residential Landlord and Tenant Act (KRLTA) which provides basic terms and conditions that apply to most residential rental agreements. The legal rights, obligations, and remedies of landlords and tenants are determined by the Residential Landlord and Tenant Act and court decisions interpreting the Act.

Kansas Residential Landlord and Tenant Act

Statutes are listed as they appear in the law:

- 58-2540 Title
- 58-2541 Situations not subject to the Act
- 58-2542 Court jurisdiction
- 58-2543 Definitions
- 58-2544 Unconscionable agreements
- 58-2545 Terms in rental agreements, presumptions if no written agreement
- 58-2546 Delivered agreement not signed may be enforceable
- 58-2547 Prohibited terms in agreements
- 58-2548 Inventory of rental unit
- 58-2549 Landlord's obligations pursuant to receipt of rent
- 58-2550 Security deposits
- 58-2551 Landlord's disclosures
- 58-2552 Landlord's delivery of possession of rental unit to tenant
- 58-2553 Landlord's duties
- 58-2554 Sale of rental unit by landlord
- 58-2555 Tenant's duties
- 58-2556 Landlord's rules and regulations
- 58-2557 Limits on landlord's right to enter rental unit
- 58-2558 Tenant's absence
- 58-2559 Landlord's failure to fulfill duties, notice, termination
- 58-2560 Landlord's failure to deliver rental unit, tenant's remedies
- 58-2561 Landlord's claim for unpaid rent, tenant's claim waived if not filed as counterclaim
- 58-2562 Rental unit damaged by fire or casualty
- 58-2563 Landlord illegally excludes tenant from rental unit, remedies
- 58-2564 Tenant's failure to fulfill duties, notice, termination
- 58-2565 Tenant's long absence, abandonment
- 58-2566 Landlord's acceptance of late rent
- 58-2567 Lien on tenant's personal property unenforceable
- 58-2568 Landlord's remedies on tenant's termination
- 58-2569 No self help by landlord permitted for recovery of premises
- 58-2570 Termination of tenancy
- 58-2571 Remedies for landlord's unlawful entry of premises and tenant's denial of lawful access
- 58-2572 Landlord's retaliatory acts prohibited, remedies
- 58-2573 Act not applicable

The **Kansas Mobile Home Parks Residential Landlord and Tenant Act**, Kansas Statutes Annotated 58-25,100 through 58-25,126, applies to mobile home tenancies when the tenant owns the mobile home and rents the lot.

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