

Commonly Asked Questions by Tenants and Landlords

Source: 2007 Housing and Credit Counseling, Inc. | **Questions?** Call 785-234-0217

The information given is based on the Kansas Residential Landlord and Tenant Act (K.S.A. 58-2540 through 58-2573), a Kansas law regulating landlord/tenant relations and referred to as the KRLTA. It is for your general information only and is not intended to answer specific questions you may have about your situation. If you need additional assistance, contact Housing and Credit Counseling, Inc. If you need legal advice, contact an attorney who has experience in this area of the law.

1. SHOULD THERE BE A WRITTEN LEASE?

Yes. A written lease clarifies each party's rights and responsibilities. It also protects both parties since neither can deny having reached certain agreements written into the lease.

A lease should be complete with all blanks filled in and any changes or additions made *before* it is signed, and each party should receive a copy. Once both the landlord and tenant sign a lease, each is legally bound by its provisions unless both parties agree to the change or if it is illegal. A lease is a very important legal document and should be kept in a safe place. Changes to a lease during the tenancy are enforceable *only* if both the tenant and landlord agree in writing.

2. WHAT IF THE LANDLORD DOES NOT USE A WRITTEN LEASE?

In the absence of a written lease, Kansas law gives protection to verbal leases. These are most often made on a month-to-month basis. Each month the lease automatically renews unless either the tenant or the landlord terminates it by giving 30 days written notice prior to a rent paying day. Whenever any of the terms of the lease are unclear, the KRLTA will presume certain terms to be included.

3. CAN HOUSING BE DENIED BECAUSE OF CHILDREN OR DISABILITY?

The federal Fair Housing Amendments Act of 1988 prohibits discrimination in housing against families with children or people with disabilities. Landlords can limit the total number of occupants in a dwelling unit in accordance with local or state housing codes but cannot deny housing solely on the basis of children or because of the tenant's disability. Only complexes with 80% of the occupants over the age of 55 can be adults only and additional requirements apply. A disabled individual must be allowed to alter the property at his own expense to make it accessible and to restore it to its original conditions at move-out. Landlords may need to adjust rules to accommodate the disabled tenant's needs. Other protected classes under discrimination law are race, sex, national origin or ancestry, religion, and color.

4. WHAT ABOUT DEPOSITS?

Most landlords require new tenants to put up a security (or damage) deposit. According to Kansas law, the security deposit cannot exceed a full month's rent for an unfurnished dwelling and 1-1/2 times the rent for a furnished dwelling plus an extra 1/2 month's rent if pets are allowed. (Special rules apply to public housing projects.) No deposits can be required for service or assistive animals of the disabled. The deposit is to protect the landlord from losses because of property damage, if the dwelling is left unclean, or if the tenant leaves owing the landlord money.

Sometimes landlords require a tenant to put up a small deposit or application fee to hold the unit at the time an agreement is made to rent the place. Such a deposit can be applied to the first month's rent or to the security deposit required. However, if the tenant has a change of mind after leaving a deposit to hold the property, the landlord may withhold all or part of the deposit fees, or fee to cover any losses suffered because of the tenant's change of mind. Tenants should always ask for receipts for any deposits, or rent payments, and these should be kept in a safe place.

5. WHAT ARE THE REQUIREMENTS AT MOVE-IN?

Kansas law requires the landlord and tenant to inspect the rental unit within five (5) days of move-in and to make a written record of the condition of the premises and furnishings. The move-in inspection is important proof of any existing damages to the property so at move-out the tenant will not be charged for these. Both the landlord and the tenant are to sign this inventory and each is to have a copy.

Tenants should do an inventory if the landlord fails to do one with them. A copy should be sent to the landlord along with an explanatory letter, and the tenant should keep a copy.

6. WHAT ARE THE TENANT'S RESPONSIBILITIES?

- A.** To pay the rent on time and in full.
- B.** To keep the premises and all plumbing fixtures and appliances supplied as clean and safe as the conditions permit.
- C.** To dispose of trash and garbage properly.
- D.** To use the electrical, plumbing, sanitary, heating, cooling, and ventilating systems and appliances provided properly.
- E.** To notify the landlord if planning to be away from the premises for more than a few days. Many leases require this and it is a good idea for security reasons.
- F.** To inform the landlord of any needed repairs as soon as they are discovered. Written notice is best.
- G.** To receive written permission from the landlord before making any modifications or improvements to the property.
- H.** To refrain from any conduct which unreasonably disturbs the peace and quiet of other tenants. The tenant also is responsible for the actions of family, friends, guests, or pets in this regard.
- I.** To obey all rules and regulations of the lease and all of the laws governing landlord/tenant relationships.

7. WHAT ARE THE LANDLORD'S RESPONSIBILITIES?

- A.** To provide the tenant a safe, habitable place to live that complies with applicable building and housing codes.
- B.** To make any needed repairs in a reasonable time and manner after being notified of such need.
- C.** To take care of the common areas when multiple living units exist.
- D.** To maintain in good and safe working order the electrical, plumbing, sanitary, heating, cooling, ventilating systems and any appliances provided in the unit.
- E.** To provide or arrange for trash and garbage removal, unless the city or county government does so.
- F.** To supply running water and reasonable amounts of hot water at all time and reasonable heat (although the tenant may be required to pay the utility bills).
- G.** To keep other tenants, their families, friends, guests, or pets from creating disturbances.
- H.** To provide, in writing, to each tenant the name and address of the landlord or the landlord's designated agent and to keep this information current.
- I.** To abide by any other agreements contained in the lease and to obey the law governing landlord/tenant relationships.

8. WHAT ABOUT RENT INCREASES?

The law in Kansas does not govern the amount or frequency of rent increases. If a written lease exists, the landlord can only raise the rent during the lease period if the lease permits it, and the lease will spell out what the landlord has to do. If it is an oral or month-to-month tenancy, or at the end of a lease that does not note otherwise, the landlord can raise the rent by giving a written notice at least 30 days in advance of the rent due date. Unless otherwise agreed, Kansas law presumes rent is due on the 1st day of the month.

9. CAN THE LANDLORD JUST WALK IN?

Even though the landlord is the owner of the rental property, the landlord or designated agent cannot legally enter the premises without first giving the tenant reasonable notice and then entering only at reasonable hours. The landlord does have the right to enter to make inspections, agreed or necessary repairs or alterations, or to show the property to workmen, buyers, or prospective tenants. In an emergency situation, the landlord may enter without permission to prevent loss of life or severe property damage. If the tenant is absent for more than 30 days without prior notice, the landlord can enter the unit. The landlord cannot abuse the right of access or use it to harass a tenant. The tenant cannot unreasonably refuse access.

10. HOW SHOULD PROBLEMS BE HANDLED?

A landlord should provide tenants with procedures for maintenance requests, phone numbers, and emergency contacts. A tenant should phone the landlord or designated maintenance contact and then follow up with a written request.

If the landlord or tenant fails to uphold the rental agreement or does not correct a situation with the rental property that affects the health and safety of the tenant, other tenants, or the landlord's property, there are remedies available. The tenant can deliver a written notice to the landlord specifically outlining the problems and stating the tenancy will be terminated 30 days after the next rent paying day if the situation is not remedied or a good faith effort made to remedy within 14 days. If the landlord corrects the problem, then the lease cannot be terminated and the tenant is obligated to stay. If the same or similar situation occurs again, the tenant can give the landlord a written notice terminating the tenancy 30 days after the next rent paying date even if the landlord corrects the problem. The tenant cannot terminate the lease for a situation or property condition caused by the tenant.

The landlord can issue the same type of notice to the tenant who is in violation of the lease or failing to uphold the responsibilities outlined under Kansas law. The landlord's notice terminates the tenancy at the end of any 30 day period if the tenant fails to remedy a condition or problem or fails to make a good faith effort to remedy within 14 days. If the same or similar problem recurs, the landlord can issue a 30-day notice at any time to terminate the tenancy.

As with any notices, copies should be kept by the tenant and the landlord; on the copy, it should be noted how, when, and to whom notice is delivered. Additional remedies are available for specific problems, but should not be employed without the assistance of a housing counselor or attorney.

IMPORTANT: Kansas law does not provide for a tenant to deduct from rent the cost of correcting a problem or fixing something without the prior approval of the landlord. In addition, the law does not provide for rent to be withheld to force a repair or correct the problem. Either action by the tenant may result in an eviction.

Additionally, Kansas law does not permit the Landlord to receive rent free of the obligation to provide and maintain housing that complies with state law and local codes and ordinances affecting health and safety.

11. CAN A LANDLORD RETALIATE AGAINST THE TENANT?

Generally not. A landlord may not retaliate against a tenant for: (1) complaining to a government agency about a housing code violation; (2) complaining to the landlord about a violation under the KRLTA; or (3) becoming involved in a tenant's union or organization. If the landlord tries to do so by raising the rent, evicting the tenant or decreasing the services, the tenant can sue the landlord for actual losses or 1-1/2 times the monthly rent, whichever is greater. The tenant is only protected, however, if the rent has been paid and the tenant has otherwise fulfilled his obligations.

12. WHAT HAPPENS WHEN THE RENT IS UNPAID?

A tenant who is unable to meet the rental obligation should contact the landlord immediately to explain the situation and try to work out a payment plan. Many landlords are willing to work with the tenant, but if the tenant will not cooperate with the landlord or tries to skip out, legal action may result. The key is to work out a total budget and only make offers that can be kept. The tenant should be prepared to explain the entire situation to the landlord.

When rent is late, the landlord must give the tenant a written three-day (72 hour) notice before beginning eviction proceedings. More time may be allowed, but at least three days (72 hours) must be provided. During this time, the tenant has the opportunity to pay the debt in full or move. If the tenant does neither of these, the landlord must begin legal action against the tenant to continue the eviction. Evictions can take place even if the tenant is pregnant or ill. Generally, landlords cannot evict for unpaid late charges when the rent is paid and can never evict legally without going through court.

13. WHAT ARE EVICTIONS?

Eviictions are the legal process by which a landlord can have a tenant removed from a dwelling unit. If the tenant fails to move out as requested in a proper notice, the landlord may file a lawsuit to have the tenant evicted. Such suits are filed in the Limited Actions Division of the District Court. A summons telling the tenant where and when to appear in court will be issued by the Clerk of the Court and delivered by the sheriff or other designated party. Rights are waived by tenants who fail to appear when summoned. Trial of such a case must be held within 8 days after the date the tenant appears in court. If the Judge orders the tenant to move out and the tenant does not do so, the Judge can order the sheriff or other designated party to remove the tenant, forcefully if necessary, and allow the landlord to lock the tenant out. All of this can happen very quickly. If legal papers are served which could result in an eviction or owing a landlord money, the tenant should appear in court as summoned, preferably with an attorney.

14. WHAT NEEDS TO BE DONE AT MOVE-OUT?

WRITTEN NOTICE. A tenant's written lease may set out the procedures required to give notice to the landlord when a move-out is planned. If the lease is verbal (not written), the tenant must still give the landlord *written* notice of the intention to move. Proper notice is in accordance with how often rent becomes due — at least 30 days in advance of the date of the month on which the rent is normally due for month-to-month tenancies, two weeks for bi-weekly tenancies, seven days for week-to-week tenancies. Even if a tenant moves out ahead of the date in the notice, rent is owed until that date. If no notice is given or if notice is not done properly, tenants may be liable for another rent payment, even if they moved out. Landlords cannot charge rent twice. If the unit is re-rented before the end of the notice, the landlord should refund a portion of the prepaid rent to the first tenant.

CLEAN. The unit should be cleaned from top to bottom. The tenant should leave it in as good a condition—or better—as at move-in. The tenant is not responsible for normal wear and tear, but if the unit is left unclean or with property broken or damaged, the tenant may be liable for cost of repairing or cleaning. This normally is deducted from the security deposit. However, if the amount to clean and repair the unit exceeds the deposit, the tenant may still be liable for the balance.

MOVE-OUT INSPECTION. A move-out inspection done by landlord and tenant together is not required by law but is strongly advised. A tenant should have a copy of the move-in inspection to verify the condition of the premises at move-out. Appropriate photographs can be taken. Possession has not been fully returned to the landlord until the keys are returned.

SECURITY DEPOSIT RETURN. A tenant should give the landlord a new address or a forwarding address for the return of the security deposit. Normally within 14 days but never more than 30 days following move-out, the landlord should return the deposit or provide the tenant with a written itemized list of deductions and a refund of any unused portion. The landlord can withhold from the security deposit to cover damages to the property and for money owed the landlord. If the landlord fails to return the deposit within thirty days, the tenant can sue in Small Claims Court for 1-1/2 times the amount wrongfully withheld in addition to the amount due.

IMPORTANT: A tenant cannot use a security deposit for the last month's rent or for charges owed during the course of the tenancy. If a tenant tries to do this, under certain circumstances the landlord can sue the tenant for the rent or charges and keep the deposit.

15. CAN THE TENANT'S PROPERTY BE KEPT AT MOVE-OUT?

If the tenant abandons, surrenders, or is removed from the dwelling unit as a result of an eviction action and fails to remove personal property, the landlord may take possession of the property. The landlord is required to hold the tenant's property for a period of 30 days and fulfill specific notice requirements outlined in the KRLTA. If the tenant owes the landlord money for past due rent, cleaning and/or repair costs, and the security deposit does not cover these costs, the landlord may hold the property according to law and may sell the property and use the proceeds to satisfy these costs as well as other charges incurred with storing, selling and disposing of the property. The tenant must pay what is due or reach some other arrangement with the landlord to avoid sale or disposal.

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HCCI counselors are not attorneys and do not provide legal advice.

HCCI forms provide a format which may be followed when drafting notices. Forms are created in accordance with Kansas law.