
KANSAS TENANTS HANDBOOK

Written and Produced by

HOUSING & CREDIT COUNSELING, INC.

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FOREWORD

As we celebrate the 30th Anniversary of Housing and Credit Counseling, Inc., we are proud to bring you the 5th Revision to the fourth edition 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. Look for:

- ◆ More categories of subsidized rental housing
- ◆ Performing cleaning, maintenance and repairs in lieu of paying a security deposit
- ◆ Impact on a current lease agreement when the property in which a tenant resides is sold
- ◆ Prohibited lease provisions providing for automatic forfeit of security deposit for ending a lease early
- ◆ Guests, and when guests stay
- ◆ Expanding our list of cities that have adopted housing codes to include Dodge City, Emporia, Hutchinson and Ottawa
- ◆ Language that must be included in paperwork provided by a landlord that serves as notice to vacate
- ◆ More discussion on crime-free and drug-free housing
- ◆ Resources for obtaining the most current information about mold contamination
- ◆ Finding the person who will accept legal papers for a corporation in a small claims suit or other legal action
- ◆ Resources for obtaining current information regarding tenant organizations and organizing

Many people assisted with our revisions to this handbook as well as our **Kansas Landlords Handbook**. We especially would like to thank...

Outside of HCCI: Marilyn Harp, Regional Director, Kansas Legal Services; Kansas Bar Association Legal Aid and Referral Committee; James Dunn and Robert Ebey, President and Vice President, Landlords of Lawrence, Inc.; Patrick Delapp, Shawnee County Landlords Association, Inc.; Sandy Watson, Landlords Incorporated of Kansas City, Kansas; Richard Jackson, ECKAN of Ottawa, Kansas; Matthew Brady, Dodge City Housing Authority; Mike Gurnee, City Planner, Dodge City, Kansas

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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!

Karen A. Hiller
Executive Director & Author
Housing and Credit Counseling, Inc.
December 2003

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Material in this book is dated. If your **Kansas Tenants Handbook** is very old, you may want to double-check your information with an attorney or local housing counseling center or contact Housing and Credit Counseling, Inc. for information about a new publication.

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DEFINITIONS

The text of this book has been prepared in accordance with the Kansas Residential Landlord and Tenant Act. Under that Act in K.S.A. 58-2543:

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 who fails to disclose as required by K.S.A. 58-2551.

OWNER is defined as "one (1) 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; and such term includes a mortgagee in possession."

PERSON "includes an individual or organization."

ORGANIZATION "includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or an association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity."

The following relationships are **not** governed by the Act:

COMMERCIAL rental agreements are not covered.

"Unless created to avoid application of this Act, the following relationships are **not** governed by this Act:

- (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." (K.S.A. 58-2541)

The definition of "dwelling unit" says that it "... shall not include **REAL PROPERTY USED TO ACCOMMODATE A MOBILE HOME** unless such mobile home is rented or leased by the landlord." Refer to K.S.A. 58-25,100 through 58-25,126 for detailed statutes regarding mobile homes.

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!**

WHAT DO YOU NEED?

It goes without saying that people have to balance what they need vs. what's available. When 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 25% to 35% of your monthly income on rent and 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 could work it out if something would happen." Know what it is, and have it in writing.

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. Sometimes people post notices on public bulletin boards in stores and laundromats. Real estate companies often manage apartments; you can call 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 check with the County Clerk to see who pays the taxes at that address and then contact them directly.

In some neighborhoods or communities, housing is very scarce. Plan ahead and let people know you're looking well in advance. Housing is often rented by word of mouth.

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.

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?

(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?

(3) Check the plumbing, including pipes around any 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? (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 the outlets where you will need them? Be sure there is enough electricity coming into the apartment 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 are leaking through. Carefully examine basement apartments. They are more prone to bugs and water leakage.

(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 apartment (thermostat or controls on radiators or heating vents). Find out if circulation is adequate to heat all rooms. If you are worried about whether your heater is safe, you can get someone from your utility company to come out and inspect your 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 the heat and hot water? Who pays for gas and electricity? You may find apartments where heat, water, and hot water 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. You will probably also have to pay deposits to utility companies, including the phone company, before they will connect your services.

(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, ice trays, etc.)?

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

(12) Check for lead paint. If the wall paint is peeling or flaking, there is a danger to young children. The taste of lead paint is sweet; therefore children like to eat it like candy. If you have young children, do not move into a place that has lead paint. If the paint is old, assume it is lead paint.

(13) If an apartment is furnished, check the condition of the furniture.

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

(15) Is parking available and/or guaranteed?

(16) 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.

(17) Ask about "house rules." Rules and regulations are enforceable by the landlord as long as they are reasonable and applicable to all tenants equally and the tenant has had notice of them at the time he or she enters the agreement. If a rule or regulation changes, or if new ones are adopted, the tenant must consent in writing before the landlord can enforce the new rules and regulations. Are pets allowed? What is the policy on guests? Look around and check with neighbors about noise and other living conditions.

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

(19) Check anything else relevant to the dwelling you are renting. You should make notes on 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. If possible, you should get any promises made by you or the landlord in writing. 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 gained from credit checks 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 inquire as to exactly 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 anyway. 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 whether you'll keep from disturbing your neighbors.

On the other hand, make sure that what you write down is factual. Kansas law makes it a criminal offense to falsify an application; conviction could result in fines or jail.

A landlord has the right to select tenants on pretty much any basis as long as he or she does not illegally discriminate (see the section called Discrimination in this handbook). If you are rejected, ask why. Maybe a reference was in error. Maybe you need to "clean up" your credit records. 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 credit references you can offer to convince the landlord that you (and your family or roommates) are a good risk.

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 have set 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 or any local housing code (see Landlord Responsibilities later in this book), 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.

One, 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 just give the notice as soon as possible. If you have to use this provision, the law says that you are entitled to your security deposit back (less any deductions for physical damage you caused) and the landlord owes you for any cash losses you suffer.

Two, 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 1-1/2 times a month's rent or 1-1/2 times your cash losses, whichever is greater, if you want to. (Keep in mind ... if you ever hold over, someone could also sue you!)

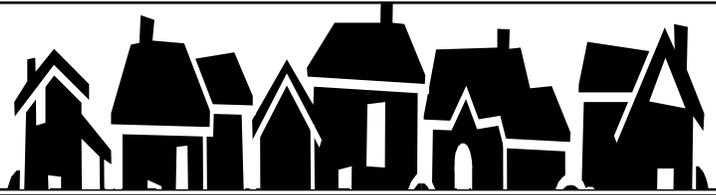
RENTER'S INSURANCE

Renter's insurance is available at a relatively low cost to anyone renting an apartment or a house. Rates vary depending on the amount of insurance, the area in which the apartment or house is located, and the type of the structure. If your apartment is burglarized or burns down, your landlord's insurance will not cover your possessions.

If you decide to get renter's insurance, you should check several companies to determine which is cheapest and provides the best coverage. Check especially whether the policy covers things stolen while you are away from home (for example, a bicycle or items stolen from your car). Also check what the deductible figure is, and whether the insurance company will pay replacement value for possessions which are stolen or destroyed by fire. Make sure that items stored in a locked storage locker (either provided by the landlord or elsewhere) are covered in your policy.

The Kansas Insurance Commissioner's office has information about companies doing business in Kansas and comparable rates. Phone: 1-800-432-2484 Website: www.ksinsurance.org

LOW RENT HOUSING



Over 49,000 rental units in Kansas are subsidized (the government pays part of the rent) through federal Department of Housing and Urban Development (HUD), Rural Development (RD) and other programs. "Public Housing," "Housing Authority," "Section 8," "Rental Assistance," "Deep Subsidy," "Low Rent," – all are names you may hear or recognize.

PROGRAMS

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. Rent is 30% of adjusted tenant income.

Project Based Section 8 – Privately owned complexes where HUD Section 8 tenant rent subsidies are available for some or all tenants through a contract between the building and HUD. Interested tenants apply directly at the building or complex office. Rent is 30% of adjusted tenant income.

Section 8 Housing Vouchers – A program which allows tenants to live in privately owned housing and have government assistance to pay rent. Tenants may 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 who then contract with the tenant and the owner. The subsidy is paid directly to the owner who then applies the subsidy to the rent. Housing Authorities, Community Action Agencies, and Agencies on Aging often are the managing agencies. Rent subsidy is based on tenant income.

Tax Credit/Section 42 - A program for new or updated apartment or townhome complexes. The program is available for elderly or families or

single persons. Single full-time students are not eligible. There are limits on income based on the number of bedrooms in units. Rents are the same for all residents.

Other – Local nonprofits and others have also developed local low rent programs. Check with your City, your housing authority or the State (see phone number 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 documented 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 of the programs have priorities for who gets housed first from their waiting list. Sometimes it's higher-income people first, sometimes lower, sometimes people who are in substandard conditions get preference, etc. These priorities change from time to time depending on which political party is in power, who is on a housing authority board of directors, etc. This policy cannot discriminate against you because you are new 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.

In all situations, you must furnish accurate information to the landlord as to the employment and income of each family member and how many people are living with you so that the landlord can determine whether you are eligible for subsidized housing, the size of dwelling unit

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.

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, your rent 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. Some programs will set your security deposit based on your rent; others will have a flat rate. 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. The only exception to this rule is that some housing authorities have been allowed to set security deposit schedules that are more than the tenant's rent, even as high as \$200 or more. The law says that to do that, the housing authority must allow tenants to pay the security deposit in payments rather than all at once.

MAINTENANCE

Subsidized housing landlords 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

In public housing, policy sometimes is that tenants are given from ten (10) to fourteen (14) days' written notice for nonpayment of rent eviction. (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 public housing and project based Section 8, the landlord must have a "good cause" to evict someone. "Good cause" may be:

- ◆ Serious or repeated interference with the rights of others.
- ◆ Serious or repeated damage to the premises.
- ◆ The creation of physical hazards.
- ◆ Nonpayment of rent.

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

In public housing, the tenant has 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. In this way, the grievance may be informally discussed and possibly settled without a hearing.

(2) Within five (5) 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 hearing to the director or project manager's office within ten (10) 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 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 HUD Office
Office of Public Housing
400 State Ave.
Kansas City, Kansas 66101-2406
(913) 551-6916
<http://www.hud.gov>

Kansas Housing Resource Corporation
1000 SW Jackson, Suite 150
Topeka, Kansas 66612
(785) 296-5865
<http://www.kshousingcorp.org>

Kansas Rural Development Office
Housing Program
1201 SW Summit Executive Ct.
Topeka, Kansas 66615
(785) 271-2720
<http://www.rurdev.usda.gov/ks/>

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

PRIVATE HOUSING

The Kansas Residential Landlord and Tenant Act lists rights and responsibilities for Kansas landlords and tenants. It has 33 sections and covers landlords and tenants that don't have written agreements as well as those that 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 money is placed with your landlord as insurance against the risk that you will not pay rent, leave owing rent, or cause damage to the property because you are not following the law or your rental agreement.



You should try to get your landlord to put your security deposit in an interest-bearing savings account, paying you the interest when you get the deposit back. This is not required by law at this time, but since it is your money being held in trust, it is only fair.

If you agree to clean the premises or perform maintenance and repair in lieu of 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? Who pays for supplies and materials? When must the work be done? Will you receive a cash return of the security deposit when you move out and leave the place in good condition?

There are several laws that say 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.
- ◆ There are limits on how much a landlord can charge for a deposit:
 - unfurnished apartment**
1 month's rent
 - furnished apartment**
1-1/2 month's rent
 - pets** – extra 1/2 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. 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.
- ◆ 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 later in this chapter on Move-In Check lists.)
- ◆ Do not try to use your security deposit while you live there to pay the landlord for rent or other charges and do not try to use it for the last month's rent. The Landlord/Tenant Act says that if you do, you could not only lose your security deposit, but you would still owe the rent or the other charges you were trying to use it for.
- ◆ You should get your landlord to inspect your place with you after you move out. 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 arrange 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, for instance, 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.)

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 (see below).

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 **change or replacement** of an item, the charge can only be for actual value. In other words, if the charge is for a repair, it can only be for the actual cost of parts and labor or it must be 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 must 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 could be charged only 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 decided to withhold 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 must be sent to you within fourteen (14) days after the determination of damages but in no case later than thirty (30) days after you give up possession (return your keys).

If your landlord doesn't return your money, doesn't enclose 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 can 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 one and one-half (1-1/2) times the amount wrongfully withheld in addition to what you feel you are due. (See the Small Claims Court section of this handbook for how to file and conduct yourself.)

When you leave, 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.)

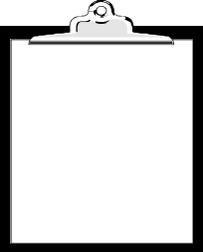
If the place you rent is sold, the old owner is required by law to return your deposit to you. Make sure you either get your money or a signed paper saying your money (specifying exact amount) has been transferred to the new owner. The new owner can ask for additional money for the deposit but the total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

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 have really got 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.

LEASES

RENTAL AGREEMENT
This is a rental agreement between the parties of the first part, i.e. The Landlord and the Tenant.
APPROVED
The rent will be due and payable on the 1st of each month in the amount agreed upon by both parties.
The Landlord



A lease agreement is a legally binding contract between you and your landlord. It should define the rights and responsibilities of both of you. In Kansas, it may be either written or oral, although 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. 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 your rights and yourself, 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 approved the lease. 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. 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 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.

(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 early.

(6) 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 that 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 in court.
- ◆ "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 apartment 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 for ending your lease early.
- ◆ any other clauses where you agree to give up rights you have according to the Kansas Residential Landlord and Tenant Act.

(7) It is possible to make changes in a lease. If you and your landlord agree to cross something out, simply draw a line through that part on both your copy and the landlord's copy. Both of you should then initial and date each other's copy in the margin right next to the change. If you want to add something, write or type it in on the lease somewhere above the signatures, then date and initial the addition. If there is not enough room, you will need to 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 should sign below. You and your landlord can write these things yourselves. Take your time and make sure your words say what you mean them to say.

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 that you cannot live with and that could be used against you. There ARE other places.

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

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

Keep your papers in a place where you can find them and read them. If you have any questions or problems in the future, you will need to read them and go by what they say.

RULES AND REGULATIONS



Besides the terms of 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. 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 that the new rules will be such-and-such 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; in a month-to-month arrangement, 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.

MOVE-IN CHECKLISTS



Within five (5) days after you move in, Kansas law requires you and your landlord to make a detailed written list describing the condition of the premises.

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. 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 household from top to bottom. Are there cigarette burns in the carpet? Are there any nail holes in the walls? Is the carpet stained or dirty? Is the oven clean? Any furnishings and appliances provided by the landlord should be noted.

To prevent your landlord from charging you for damages caused by previous tenants, complete the checklist in detail. A small hole in a vinyl chair can stretch and grow and later develop into a big problem for you when the landlord sends you the bill for repair.

Don't sign your name to a list a landlord has filled out before you check for yourself! The law says you and the landlord are to do the inspection together. Even the best of us miss things. Also, 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 when you moved in or a handle was already broken on a door.

If you discover things that need repairs as you inspect, put the landlord's promises down in writing right on your checklist. If the landlord says he or she will replace that sagging clothes pole in the closet within two weeks write down, "Bedroom clothes pole 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 a friend to be a witness and go with you. Make the written list, then you and your witness sign it. Send a copy to your landlord. Take pictures if you can.

Also, if you later discover something that you missed on your list (like the bathtub drains slowly or something), send the information to your landlord in writing right away. Make a copy of what you wrote and keep it with your checklist.

When you move out, you and your landlord should reinspect the home and sign another checklist or a statement that the home is in satisfactory condition and your security deposit will be returned.

RENT AND LATE FEES



Rent is due, in full, in advance of or on the rent-paying date. In Kansas, if a rent-paying date has not been specified, the law says it is assumed to be the first of the month in a month-to-month relationship. If your rent date is to be other than the first, then, 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.

"Late charges" for late rent are allowable in Kansas. You must be informed of them as part of your original rental agreement. If your landlord wants to start charging them later, a 30-day 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 through a long-term lease.

RENT RAISES

Kansas has no laws that limit either how much your rent can be raised or how often.

Because a rent raise is similar to an eviction, there is one rule. Your landlord must inform you of a rent raise **IN WRITING** at least 30 days in advance of the rent date when it is supposed to go into effect if the rental agreement is on a month-to-month basis. Having your 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 rent raise notice, 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, demand to see 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 the chapter on Tenant Organizations later in this handbook.) 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 have changed the rental agreement, your landlord could ask you for more rent, or require references to put the new person on the lease, or ask you to move.

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

LANDLORD RESPONSIBILITIES



The Landlord is required to:

- ◆ Keep the apartment, mobile home, or

house where you live in compliance with city or county building or housing codes affecting health and safety.

- ◆ Maintain areas of the building and the grounds outside which are open to all tenants. Common areas such as hallways, parking lots, and laundry rooms are a few examples.
- ◆ 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 68 degrees between October and May. (The landlord doesn't necessarily have to pay for the water, electricity, or gas, but the landlord must provide the equipment and it must work.)
- ◆ Maintain all electrical, plumbing, sanitary, heating, ventilation, 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 cablevision companies that are authorized to do business in the area.

Make it a habit to **REQUEST MAINTENANCE IN WRITING**. Not only is this good business in a legal sense (because you will, of course, keep dated and signed copies of all notes or letters), 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. 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?" Many leases require that maintenance requests be in writing. Other people should not be counted on to get your messages to the landlord. 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.

WARRANTY OF HABITABILITY

The Supreme Court of Kansas has established the principle of “implied warranty of habitability.” Basically, this says that 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 that case in 1974, a Wichita woman and her five children ended up getting \$800 back from a landlord who had negligently refused to make repairs.

TENANT REMEDIES

If the landlord continually fails to meet maintenance and contract requirements, 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 letter at least 30 days before a rent date. In your letter, tell the landlord exactly what repairs are needed, when you want them finished (give the landlord at least 14 days), and that you will be moving out on the next rent date if the repairs aren’t adequately taken care of. If the repairs aren’t made, or at least a “good faith effort” started, within the time you allow, then you can move out. Assuming you were a good tenant (paid the rent, didn’t tear up the place, etc.), the landlord can’t pursue you for future rent and must return your security deposit. If you give the notice and decide not to move, make your plans well known to the landlord in writing.

Kansas law also provides that the tenant has the right to collect “damages” from a landlord if the landlord does not comply with the laws regarding maintenance. This applies whether you decide to break your lease (see above) or to stay. What this means is that 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 had to use your electricity or gas to correct something that was the landlord’s responsibility, and so on). 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, then, though they sometimes work, are risky. Neither are advisable without the support of an attorney. If you try either of them, you should be prepared to pay the rent in full if you get an eviction notice or have your attorney take over. (The City of Manhattan, Kansas, has a local ordinance that allows for escrow of rent in certain situations.)

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 says that you should be compensated accordingly.

You can give a written 5-day “notice to quit” and move out immediately if your place can’t be lived in at all. The law says that 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. The landlord’s insurance should cover most of these expenses, though a tenant can be charged with at least an insurance deductible amount if the fire or casualty was the tenant’s fault.

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.

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, the box on this page contains some of the requirements from the Housing Code for the City of Topeka, Kansas.

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 that 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, it is strictly ILLEGAL for your landlord to refuse to make these repairs or to force you to do them. As was mentioned before, if this happens, you can break your lease and/or there is a section in the law that allows you to sue for 1-1/2 times rent or damages.

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.

EXAMPLES FROM TOPEKA'S HOUSING CODE

Screens: Screens and screen doors are required on almost every dwelling unit in Topeka.

Rats and Roaches: The landlord is required to deliver units to tenants pest-free. Rats and roaches must be exterminated 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 problem.

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.

In many cities and towns, a housing code exists but 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. If you ever need to call and have an inspection made, 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, then ask to have a copy of the inspector's report and the letter to your landlord sent to you. You can also 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

Structures housing three or more residential rental units must be in compliance with the Kansas Life Safety Code. That code requires smoke alarms, does not require fire extinguishers, and generally requires two safe exits from any building. Local governments that adopt their own fire codes can make them stricter, but not more permissive, than the state's. Check with your local fire department to see if you have a local code. If not, questions can be directed to the State Fire Marshal in Topeka at (785) 296-3401.

HOUSING CODES

These cities currently have Housing Codes. If you go to your city hall and ask for a copy of the Housing Code and they say that they've never heard of it, **INSIST!** It's there somewhere. And you want the Housing Code (it may also say "property" or "maintenance" or "occupancy" in the title), not the building code, zoning code, electrical code, plumbing code, or some other specific code.

Abilene	Dodge City	Junction City	Neodesha	Shawnee
Anthony	Emporia	Kansas City	Newton	South Hutchinson
Atchison	Galena	Lawrence	Norton	Sterling
Augusta	Garden City	Lenexa	Olathe	Topeka
Baxter Springs	Goodland	Liberal	Ottawa	Ulysses
Belleville	Great Bend	Lyons	Paola	Wellington
Beloit	Hays	Manhattan	Parsons	Wichita
Bonner Springs	Hoisington	McPherson	Plainville	Winfield
Chanute	Hutchinson	Merriam	Russell	
Colby	Independence	Minneapolis	Salina	

LEAD-BASED PAINT REGULATIONS

Federal Environmental Protection Agency and Housing and Urban Development regulations concerning lead-based paint for housing built before 1978 went into effect in 1996. To comply, a landlord 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.
- ◆ Contracts must include a disclosure form containing information on lead based paint in the rental unit and acknowledgment from the tenant that they have received this information.

Copies of the pamphlet and disclosure form can be obtained FREE of charge by calling The National Lead Information Clearinghouse at 1-800-424-LEAD. Copies may also be obtained on the Internet at www.epa.gov/docs/lead_pm or contact the National Center for Lead-Safe Housing at www.leadshousing.org. 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

MOLD CONTAMINATION

The issue of mold contamination in housing has become an issue of concern. Kansas Health 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:

Center for Disease Control

www.cdc.gov/nceh/pubcatns/facts/molds/default.htm

Environmental Protection Agency

www.epa.gov/cgi-bin/epaprintonly.cgi

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 set up laws to prevent this. The Kansas law says that 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 city felt the six months was important to provide 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 expect to move, at least temporarily.

In court, your landlord would be asked to justify his or her action. You would need to be prepared to prove, however, that:

- ◆ you always paid the rent on time.
- ◆ if the landlord claims that you were sometimes late with the rent, it should be mentioned that the landlord accepted this late rent without comment (if that is 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 that the landlord has no good reason to evict you, raise your rent, or decrease services.

LANDLORD ENTRY



Tenants occasionally face another problem during tenancy – landlord entry. Tenants wonder, "May the landlord enter my home whenever he wants?" The answer is "NO." Only in cases of hazard involving the possible loss of life or severe property damage may the landlord enter your home without permission.

The landlord may, after giving "reasonable notice" and arranging a "reasonable time," 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 twenty-four 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 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 doubletime to a plumber who could have come during normal working hours – that cost is likely to 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 clearly exactly when people can and cannot come over to your house and how much notice you must have. Give phone numbers for reaching you. You should not refuse “reasonable entry,” neither can 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.

Some obligations you should meet are:

Pay your rent on time. 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 nonpayment 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 (especially 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.

Try to get along with the other tenants. Everyone has a right to the peaceful enjoyment of the property. If you have a dog, for example, it’s up to you to keep it from disturbing your neighbors.

Check with your landlord before you attach anything to the apartment, such as shelves or

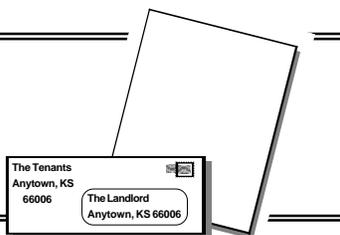
carpet. Unless you make some other arrangement, anything attached to the property stays with the property by law. The time to ask is before the carpet you bought is tacked to the floor, not after. Again, be sure it's in writing.

Check before having a roommate move in since this is a change in your original agreement. Check also about pets if you want to get one.

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 anyway.

Keep in mind that you are responsible not only for your own actions, but also those of your family, your friends, your friends' friends – any person or animal in your home with your express or implied consent. Any damage or trouble caused by these other parties can be held against you.

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!**

NOTICE TO THE LANDLORD

Thirty (30) days' notice in writing in advance of a rent-paying date is required in all month-to-month tenancies. Your planned move-out date should be specified.

Thirty (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 it must be from rent date to rent date.

Week-to-week tenancies require at least seven (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, two

(2) weeks written notice is required.

Military personnel on active duty with month-to-month written or verbal agreements are required to give only fifteen (15) days written notice if they get orders to relocate.

14/30-day notices from rent date to rent date can be given when there is a problem the landlord must resolve to ensure the tenant will stay. (See Tenant Remedies subsection earlier in this chapter.)

Leases can vary. Most leases will only talk about notices to move out at the end or for the renewal of the lease, since you are not expected to be giving notice and leaving in the middle of a term. If you have a lease, read it carefully for notice requirements. Leases can require less than the normal 30-day 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.

NOTICE FROM THE LANDLORD

Unless a tenant has not paid the rent (see next subsection), a landlord must **ALWAYS** give tenants at least **thirty (30) days' written notice to move out.**

Rare exceptions to this rule include situations where the landlord never rented to the person in the first place or where life-threatening circumstances require that a property be vacated immediately.

Thirty (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 subsection above.)

14/30-day notices can be given from landlord to tenant as long as they state a specific reason or reasons why a tenant might be evicted and allow fourteen (14) days to solve the problem(s) to prevent the eviction. Unlike the similar notice from tenant to landlord, Kansas law does not tie these to rent-paying dates; they can be for any thirty-day period.

In Kansas, a landlord is generally not required to give a reason for an eviction. However, most 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 subsection earlier in this chapter.)

Tenants are not protected from eviction because of illness or pregnancy in the household.

You are required to pay for all the time you live in the home, whether you are evicted or not.

NONPAYMENT OF RENT/ 3-DAY NOTICE

If you are behind in your rent, you may be served with a **3 day (72 hours) notice**. This notice must state in writing that you have 3 days, 5 if the notice was mailed, to either pay your rent or move out. If you do neither, your landlord can bring suit against you in court. Check your lease, if you have one, to see if it requires more notice than this in such situations.

The landlord must accept the money if you offer the **full amount within the 3 day (72 hours) 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 not be a bad idea for you to have a witness along in case promises are made but you can't get them in writing.

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 and grounds for termination of the tenancy. These generally refer to the tenant, any member of the tenant's household, guests, or other persons whom 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. These evictions have been upheld in courts.

It is important to understand that the federal “One Strike” legislation creating these provisions and addendums, as of September 2003, applies only to HUD subsidized housing. However, the addendums have worked for some private landlords.

IMPROPER NOTICE

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 want to move out early might be that you would run the ad and do everything you could to re-rent the place for the landlord 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 rent twice. So, even if you couldn't work out a compromise and you left early, if the landlord gets the place re-rented, the landlord must refund you the rent you paid in advance for the time the new people are there. Also, a landlord has a responsibility to "mitigate damages." That means that once a landlord knows you are leaving, he or she must make an attempt to re-rent the property. So, as soon as you know you have 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.

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, wait the specified period, go back to court for trial, 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.

The illegal methods (also called "constructive evictions") 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 do 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 recover an amount equal to 1-1/2 times the monthly rent or actual damages, whichever is greater. There has also been a recent Kansas Supreme Court case where some tenants were awarded \$1000 in "punitive" damages in a similar situation.

NEW TERMS AT TERMINATION

At the termination of a tenancy, if the landlord provides the tenant with paperwork that would serve as notice to vacate, and the paperwork contains any additional terms not contained 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.

Abandonment And Personal Property

If a tenant is evicted or leaves personal property in a rental unit after move-out, the tenant's personal property may be treated as abandoned property if the tenant has been evicted and the tenant owes the landlord back rent and other expenses or the following is true:

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

If the property is abandoned, the landlord may sell or dispose of the 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).

IF YOU DON'T LEAVE

If you aren't out at the end of a notice, you are probably in trouble if you didn't work out something with your landlord. The landlord personally cannot put you out on the streets or cut off your utilities if you are not out, 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 1-1/2 times a month's rent or actual damages, whichever is higher, because you remain 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, 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. 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 lawyer appear in court on that day. If both of you fail to appear and the hearing has not been postponed, you lose your case by default, and a judgment is immediately made against you.

If your case goes to trial, which it probably will unless you settle with your landlord out of court, the trial date must be set within eight (8) days of your first court appearance.

There is sometimes 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), 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.) Where the landlord is suing you for nonpayment of rent, Kansas law says that you must bring up any counterclaims the first time you go to court or you can never claim those damages later. **MAKE SURE YOU OR YOUR ATTORNEY FILE YOUR "ANSWER" IN WRITING IN ADVANCE OF YOUR COURT HEARING, IF YOUR COURT PAPERS REQUIRE IT. Otherwise, the judge may not be willing to listen to your defense or counterclaims.** A well presented and well documented defense may enable you to win your case on some or all points.

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 will usually award "immediate possession" to the landlord and can order the sheriff to assist the landlord if you don't move. The sheriff's department, by law, has up to ten (10) days to get you out, but it can happen sooner. If your situation ever gets that far, you really should try to move yourself. The sheriff will take your things and put them out of the property (maybe simply out in the yard, maybe in storage) or will assist your landlord in doing the same. To get your things out of storage, you will first have to pay the moving and storage expenses, probably the court costs, and maybe also all of the money (if any) that 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. There has been a trend among Kansas judges to deal with warranty of habitability claims more seriously. The other, and perhaps most 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 wages. (Refer to the section on collecting a court judgment.)

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 **and** the lot are 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, but pet deposits are **NOT** addressed.
- ◆ The park owner is to maintain security deposits in a separate account, but 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 only.
- ◆ When no written lease exists, 60-day notice to quit must be given by either party.
- ◆ Renewable, written 30-day leases require only 30-days notice to quit.
- ◆ No move-in inspections of the lot are required, but it's a good idea.
- ◆ A mobile homeowner can give a 14/30 day notice for any period – it's not tied to the rent due date as with residential tenants.
- ◆ Any improvements on the lot made by the mobile homeowner are the property of the mobile homeowner and can be removed at move out.
- ◆ A mobile home is considered abandoned if rent is more than 3 days late and the homeowner is absent more than 30 days. The homeowner is responsible for all past due lot rents, removal and storage costs, utilities due and costs of serving the lienholder. Costs begin accruing from the date of written notification.
- ◆ A mobile homeowner on active military duty renting a lot **CANNOT** give 15 days notice to terminate a month-to-month rental agreement when receiving transfer orders.

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 type required and approved can be obtained from the Div. of Architectural Services, Kansas Dept. 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; Tie downs, K.S.A. 75-1226 and 75-1227.

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.

DISCRIMINATION



Basically, all prospective and current tenants must be respected and treated equally.

Current federal fair housing laws extend protection from discrimination on the basis of race, sex, religion, national origin, ancestry, color, familial status and disability. This protection applies to all sections of the United States.

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.

Although Kansas state discrimination laws are in compliance with federal laws, not all local governments have included families with children and persons with disabilities. Some local laws protect additional groups such as marital status and sexual orientation.

Fair housing laws cover not only the specific decision on whether to sell or rent to certain persons or classes of people, but also issues such as charging higher rent or establishing different requirements, conditions, or services. They cover the individuals involved, and situations involving families or guests may apply as well.

Landlords can not legally threaten you, intimidate you, or otherwise retaliate against you if you stand up for your rights.

If you think you have been discriminated against, you should definitely check out your rights and pursue a complaint either directly with your landlord or through the appropriate authority. If it's too late to make the situation better for yourself, at least you can maybe make it better for the next person. The following listing details the powers and procedures for the various ways to provide fair housing complaints.

LOCAL GOVERNMENT

(See box for which cities have fair housing ordinances - next page)

GROUPS COVERED: Varies. Generally include race, sex, religion, national origin, color, ancestry. Some include handicap, marital status, families with children, sexual orientation and welfare income.

WHO INVESTIGATES: Volunteer board members or paid staff.

LIMIT TO FILE: Varies. Generally 180 days.

POWERS: (1) Voluntary conciliation agreements which can include cash awards, agreements to rent, not evict, change management practices, etc. (2) Public hearings before volunteer boards, legal counsel often available. Ability to order injunctions and 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 and Wichita, who travel the entire state.

LIMIT TO FILE: 1 year.

HOW SOON INVESTIGATION MUST

START: Respondent (the landlord) must be contacted within 10 days.

POWERS: (1) Voluntary conciliation agreements. (See Local page 29.) (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, no limit, and "pain and suffering" damages up to \$2,000.00. Decisions are enforced by or appealed to Kansas District Court.

HOW TO CONTACT: The Kansas Human Rights Commission is in Topeka at 900 SW Jackson, Suite 568, South, 66612; phone 1-888-793-6874. Education specialists are available to answer questions. You can also obtain a copy of the Kansas Act Against Discrimination upon request or at www.khrc.net

FEDERAL GOVERNMENT

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

Disability is the same as "handicap" and 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.)

Renting to families with children can still be limited by occupancy limits in local housing codes in terms of how many people a landlord can rent to, but buildings or complexes which meet certain guidelines for operating exclusively for senior citizens are the only ones which can exclude families.

All new rental construction with 4 or more units must be "accessible" or "adaptable" for disabled persons. Copies of the law are available from HUD, your library, your congressperson and on the Internet.

Civil Rights Commissions

A 1988 state list indicates that 24 Kansas cities have fair housing ordinances. Copies of these ordinances should be available through the City Clerk. The City Manager or someone in a Community Development or Human Resources department is usually responsible for investigation. Most cities have a Human Relations Commission, a board of local citizens appointed to settle disputes.

Arkansas City
Atchison
Chanute
Coffeyville
Dodge City
Emporia

Fort Scott
Garden City
Hutchinson
Independence
Junction City
Kansas City

Lawrence
Leavenworth
Liberal
Manhattan
Olathe
Ottawa

Parsons
Pittsburg
Salina
Topeka
Wichita
Winfield

WHO INVESTIGATES: Paid staff of Department of Housing and Urban Development (HUD), based in area or regional offices, who will 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. (See Local and State above). (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 would represent 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 1-800-669-9777 for national information or 1-800-743-5323 for the Great Plains Regional HUD office, 400 State Avenue, Kansas City, Kansas 66101

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; contact libraries or human relations boards for names of attorneys nationally that 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!

Some 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 (\$15-\$25) for this. 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, on paper, an 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.

If you run out of possible names or don't have any in the first place, you can call **Lawyer Referral Service** at 1-800-928-3111. 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 your local **Kansas Elder Law Hotline** at 1-888-353-5337 for a referral to an attorney 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 \$1,800.00 or less. It is especially useful for the collection of a security deposit from a landlord or a decision on who would pay a disputed repair bill.

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: If one party is a lawyer, the other party may hire a lawyer.
- (2)** Persons under 18 must be represented by an adult.
- (3)** You may not authorize a third party to sue in 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 for more than

ten (10) 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 \$31.00 to \$51.00 depending upon the amount of the claim and the county you are filing in. The judge may waive this fee if good cause is shown 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, you should go to www.accesskansas.org/apps/corporations. 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 then assign a date and time for your claim to be heard. The sheriff will serve a summons on the defendant to notify him or her of the court proceedings.

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 YOU ARE THE ONE BEING FILED AGAINST?

You will receive a summons stating that the landlord claims you owe an amount of money up to \$1,800.00 for back rent, damages, or whatever. You can defend yourself if you feel you do not owe the money or countersue if you feel the landlord owes you money. It costs nothing to countersue unless your claim is over \$1,800.00 and you choose to 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. (This settlement should include any court costs and interest desired.) If you aren't totally satisfied, go ahead to court and get your hearing and official judgment on the entire claim.

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.

One thing you might consider is going and sitting in on Small Claims Court before you file or at least before your hearing date comes up. 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 HAPPENS IN COURT?

Be sure that 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 not a 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 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 any 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.

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 five 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 to have 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 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 at no cost to you. 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” (see section above).

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

A checking or savings account can be garnished in one lump sum. When filing for this type of garnishment, you must enter 1-1/2 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 IT TURNS OUT THAT THE SCOPE OF THE CLAIM IS BEYOND THAT OF SMALL CLAIMS COURT?

You may decide that your claim is too complicated for Small Claims Court or a judge may decide that. 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.
- (3) You can go to the next higher court level. There you will probably need an attorney and the fee will be higher if your claim is over \$1,800.

A claim cannot be split into two suits.

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 ten 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. The 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



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 form for security. Sometimes they begin as defensive organizations to make specific complaints against rent raises, evictions, or a landlord's refusal to make repairs.

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.

Meetings: People come to meetings for a variety of reasons – social, personal fulfillment, fun. 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 would allow 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. A limited time for open discussion of issues that are not central to the work that needs to be done 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 difficult 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, meet-

ings, 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. A lawyer should be neither conservative nor militant in presenting these choices; the best technical advisor may be the worst political decision

maker. 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**. These Kansas law books are available to you 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, 100-58-25, 126) and other items noted below can be ordered from Housing and Credit Counseling, Inc.

Before You Rent - Fraud on Applications, landlord remedies, K.S.A. 36-206 and 36-207; Kansas Fair Credit Reporting Act, K.S.A. 50-701 through 50-722; Possession, K.S.A. 58-2552, 2560.

Low Rent Housing - There are volumes available on each kind of government-assisted program; the regulations are constantly changing. Ask your manager to give you a copy of the regulation(s) you want to see. Your state, HUD or Rural Development staff should be able to help you with further questions. (See box with phone numbers on page 12.)

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

Leases - K.S.A. 58-2543 through 58-2547, 58-2549, 58-2556, 58-2558, 58-2565; Subleasing K.S.A. 58-2511, 58-2512, 58-2515; Disclosure of Ownership, K.S.A. 58-2551, 58-2554; Kansas Contract Law (not detailed here) also applies; 1975 Kansas Supreme Court case **Chelsea Plaza Homes, Inc. v. Moore**, re: Kansas Consumer Protection Act does not apply; Model Leases can be ordered from Housing and Credit Counseling, Inc.

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

(Continued on following page)

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

Rent and Late Fees – K.S.A. 58-2543, 58-2545, 58-2566, 58-2572; Damage or Destruction by Fire or Casualty, K.S.A. 58-2562; Liens, K.S.A. 58-2567; City of Manhattan Ordinance #3081 provides for escrow of rent under certain circumstances; Copies of the Manhattan Ordinance can be ordered through Housing and Credit Counseling, Inc.

Landlord Responsibilities – K.S.A. 58-2543, 58-2549, 58-2553, 58-2559, 58-2561, 58-2562, 58-2563, 58-2569, 58-2572; Damage or Destruction by Fire or Casualty, K.S.A. 58-2562; 1974 Kansas Supreme Court case *Steele v. Latimer* established implied warranty of habitability ; Utility company tariffs can be obtained from each utility company or from the Kansas Corporation Commission; Model Maintenance Request can be ordered from Housing and Credit Counseling, Inc.

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

Tenant Responsibilities – K.S.A. 58-2543, 58-2555, 58-2558, 58-2564; Possession, K.S.A. 58-2570.

Mobile Home Parks – Tiedowns, K.S.A. 71-1226 through 71-1234; Mobile Home Parks Residential Landlord and Tenant Act - 58-25,100 - 58-25,126; Copies of this Act can be ordered from Housing and Credit Counseling, Inc.

Notice to Quit from the Tenant – K.S.A. 58-2559, 58-2560, 58-2562, 58-2563, 58-2570, 58-2571; Abandonment, K.S.A. 58-2565; Damage or Destruction by Fire or Casualty, K.S.A. 58-2562; 14/30 Day Notice, K.S.A. 58-2559; Leaving Without Notice with Intent to Defraud, K.S.A. 36-206 and 36-207; Model 30-Day and 14/30-Day Notices can be ordered from Housing and Credit Counseling, Inc.

Evictions – K.S.A. 58-2504, 58-2505, 58-2509, 58-2552, 58-2560, 58-2561, 58-2564 through 58-2572; Court Process (Forcible Detainer), K.S.A. 61-2301 through 61-2311, Employment Related, K.S.A. 58-2504; Liens, K.S.A. 58-2565, 58-2567; Lock-Outs, K.S.A. 58-2563, 58-2567, 58-2569; Retaliation, K.S.A. 58-2572; City of Topeka Code 21-243 and 21-244; Service of Notices, K.S.A. 58-2510, 58-2550, 58-2554, 58-2562, 58-2563, 61-1801 through 61-1807, 61-2304; Squatters, K.S.A. 58-2509, 58-2511, 58-2512; 1983 Kansas Supreme Court case *Geiger v. Wallace* established punitive damages in constructive eviction; United States Supreme Court case *Rucker v. Davis* upheld "one-strike" eviction of tenants; 24 CFR Part 5, et al regarding Public Housing "one-strike" rules; Model 3-Day, 30-Day, and 14/30-Day Notices can be ordered from Housing and Credit Counseling, Inc.

Discrimination – Kansas Act Against Discrimination, K.S.A. 44-1001 through 44-1043; local ordinances; federal Fair Housing Act of 1968 and Fair Housing Amendments Act of 1988.

Small Claims Court – Kansas Small Claims Procedure Act, K.S.A. 61-2701 through 61-2713; Aid in Execution, K.S.A. 61-2204; Garnishment and Attachments, K.S.A. 61-2001 through 61-2012.

Tenant Organizations – K.S.A. 58-2572.

Tenants Right to Organize - 24 CFR, Code of Federal Regulations, Part 245

Links for tenant organizations: National Housing Law Project (www.nhlp.org) and National Alliance of HUD Tenants (www.saveourhomes.org)

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Tenant-Landlord ♦ Homebuyer ♦ Consumer Credit

Tenant-Landlord Publications Available:

Kansas Tenants Handbook

Kansas Landlords Handbook

Model Lease and Move-In Inventory

Form Notices For Landlords

Form Notices For Tenants

Kansas Residential Landlord and Tenant Act

Relevant Court Cases and Local Ordinances

Mobile Home Parks Residential Landlord and Tenant Act

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