

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

## WARRANTY OF HABITABILITY

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

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

## DAMAGE OR DESTRUCTION BY FIRE OR CASUALTY

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

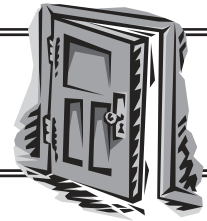
You can give a written 5-Day Notice to Terminate and move out immediately if your place can't be lived in at all. The law says any prepaid rent after the move-out date should be refunded to you. Your security deposit is to be returned as in a normal move out.

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

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

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

## LANDLORD ENTRY



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

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

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

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

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

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

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

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

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

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

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

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## TENANT RESPONSIBILITIES

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

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

### You are responsible to:

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

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

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

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