

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

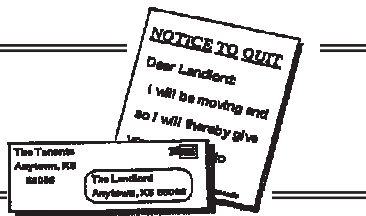
**Check before having a roommate move in or before getting a pet** since both would be changes in your original agreement.

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

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## TERMINATING THE TENANCY

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

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

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

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

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

- 3) mailed to the person's address.

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

## NOTICE TO THE LANDLORD

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

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

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

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

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

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

## NEW TERMS AT TERMINATION

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

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

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

## NOTICE FROM THE LANDLORD

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

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

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

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

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

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

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

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

## ILLEGAL ACTIVITY

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

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

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

## EARLY TERMINATION

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

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

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

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

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

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

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

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

## ILLEGAL EVICTIONS

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

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

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

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

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

## RETALIATORY EVICTIONS

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

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

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

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

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

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

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

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

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

## ABANDONMENT

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

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

## DISPOSAL OF PERSONAL PROPERTY

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

(1) Holds the property for at least 30 days, giving the tenant the right to redeem if outstanding debts are settled.

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

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

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

## IF YOU DON'T MOVE OUT

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

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

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

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

## EVICTION – COURT

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

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

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

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

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

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

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

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

## **EVICITION – GETTING OUT**

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

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

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

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

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

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