



RIGHTS AND RESPONSIBILITIES

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

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

SECURITY DEPOSITS



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

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

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

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

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

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

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

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

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

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

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

- (1) **Physical damage** beyond normal wear and tear caused by you, your family, your guests, and/or your pets.
- (2) **Rent** that is past due.
- (3) **Other expenses** your landlord has suffered because you have not complied with the law or your rental agreement. This could include the cost of running an ad to get new tenants if your landlord normally runs ads and you break a lease before its term expires, or all or part of the next month's rent if you are renting month-to-month and do not give a proper 30-day notice and the landlord is unable to get another tenant to move in immediately after you move out.

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

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

landlord should return everything except what can be specifically itemized.

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

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

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

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

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

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

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

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

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

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

ROOMMATES

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

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

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

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

LEASES / RENTAL AGREEMENTS



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

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

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

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

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

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

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

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

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

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