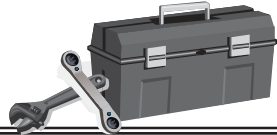

TENANT REMEDIES



Make it a habit to **REQUEST MAINTENANCE IN WRITING**. Not only is this good business in a legal sense, 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. On your copy, note how, when, and to whom the notice is delivered. Example: "Handed to Sue in the manager's office, 9:00 a.m. on May 1, 2006."

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?" Some leases require maintenance requests be made in writing. Sometimes, as we know, phone messages do not get to the intended person. 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.

14/30-DAY NOTICE OF LANDLORD NONCOMPLIANCE

If the landlord continually fails to meet maintenance or contract agreements, 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 written notice at least 30 days before a rent due date. In your notice, tell the landlord exactly what repairs or other actions are needed and that you will be terminating your rental agreement and moving out before the next rent date **UNLESS** the repairs or actions are adequately taken care of within 14 days after receipt of the notice.

If the problem is not fixed, or at least a "good faith effort" started, within the time you allow,

then you can terminate your lease and move out at the end of the rent period. Assuming you were a good tenant (paid the rent, didn't tear up the place, etc.), the landlord should not pursue you for future rent and should return your security deposit. If you give the notice and decide not to move, make your plans well known to the landlord in writing. (See Terminating the Tenancy and Security Deposit Returns in this chapter.)

Kansas law also provides the tenant the right to collect "damages" from a landlord if the landlord does not comply with the laws. This means 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 failed to repair something that was the landlord's responsibility, and so on). This applies whether you decide to break your lease or to stay.

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, though they sometimes work, are risky. Neither is advisable without the support of an attorney. If you try either, you should be prepared to pay the rent in full if you get an eviction notice or have your attorney take over. You should also have documentation showing your attempts to get the landlord to make the repairs or provide the maintenance requested.

The cities of Atchison and Manhattan have ordinances that allow for escrow of rent in certain

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.

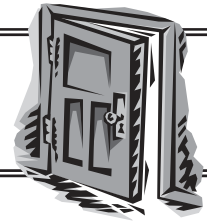
You can give a written 5-Day Notice to Terminate and move out immediately if your place can't be lived in at all. The law says any prepaid rent after the move-out date should be refunded to you. Your security deposit is to be returned as in a normal move out.

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