
EVICCTIONS



The most important thing to keep in mind when considering evicting a tenant is **DON'T WAIT!** In many cases, landlords never recover lost rent and other "damages" from tenants they desire to evict. The longer they wait, the more money they lose. Looked at another way, the sooner you get bad tenants out, the sooner you will get good tenants in. When you are budgeting, expect that you can write and serve your own notices but that you will have to hire an attorney to handle an eviction in court. Your legal fees and court costs will probably be at least \$150.00. Legal fees are usually not recoverable in landlord-tenant suits, so expect that they will be a business expense to you.

30-DAY NOTICE

In Kansas, if a tenant is renting from month-to-month and a landlord wants the tenant to move, the landlord must give the tenant a written "notice to terminate" or "notice to vacate" at least thirty days in advance of a rent paying date that is specified in the notice. If the rent period is less than thirty days, the notice requirement is equivalent to the rent period (i.e., week-to-week, seven days' notice; rent paid twice a month, fifteen days' notice). If there is a lease agreement, the notice to terminate/vacate must be in compliance with the lease agreement.

The key thing to remember here is that the notice must be given at least 30 days in advance of a rent-paying date. This means that, if your tenants pay their rent on time, perhaps you can exchange the eviction notice for the rent. If the tenants pay late, you're going to have to serve the 30-day notice before you get the rent. Tenants owe the last month's rent whether they have given or received the notice to quit and you need to make this clear to your tenants. (Some tenants don't want to or won't pay.) If you hold off on giving the 30-

day notice until you have the rent in hand, a wise or devious tenant will know that, at that point, the notice is too late and that the tenant has the right to stay in the place another thirty days.

A 30-day eviction notice can be very short and needs simply to say something like:

(Date)

Dear (Tenant) : The purpose of this letter is to ask you to move out of the property that you are renting from me at (Address) by (Date)

Sincerely, (Landlord)

You do not have to state a reason in a 30-day notice. In fact, it is better that you don't, so that the tenant does not have a defense in a possible suit based on the reason. Some tenants may tell you that they're sure there is a law that says that you cannot evict a tenant who is pregnant or if someone in the house is ill. This is not true.

The only time that you cannot give a tenant a 30-day notice is if there is a lease for longer than month-to-month and it does not provide for giving a 30-day notice during that time or if your motive is retaliatory. (See subsection entitled "No Retaliation" later in this chapter.)

3-DAY NOTICE (72 HOURS)

If a tenant is behind in rent, a "3-day notice" can be given. Kansas law has no statutory "grace period" for rent payments. So, unless your rental agreement provides a grace period, this notice can be issued the minute the rent becomes delinquent. Non-payment of rent is the **ONLY** time that less than a full rent period of notice can be given.

Because a portion of your lawsuit involves collecting money, be aware that the Federal Fair Debt Collection laws apply and may require

certain warnings when you write the tenant about money due.

The following is an example of how you might word a non-payment of rent eviction notice.

(Date) _____
Dear (Tenant) _____: As my tenant at
(Address) _____, you are currently behind in
rent payments. My records show that you
owe \$ (Amount) _____ which was due
(Date(s)) _____. If you do not either pay the
above amount in full or move out of the
property within (Number) _____ days, I will
be forced to take legal action against you
for the money and/or possession of my
property. (Option: I hope that this situation
can be worked out satisfactorily, as legal
action would be costly to both of us.)
Sincerely, _____ (Landlord)

Note that the sample notice says to pay the rent in full or move out within "X" number of days. The law requires that you give no less than 3 days. If delivered by mail, an additional 2 days from the date of mailing must be allowed. You can give more days if you like. You do not have to accept partial payments and you do not have to accept any payments after the time is up. If you do choose to accept partial payments or late payments, be very careful in your receipt to indicate whether by accepting that payment you are voiding the eviction notice and/or whether you are planning to continue with your legal action. If you agree to forestall legal action because the tenant has offered an acceptable payment plan, get the plan in writing. Make sure it is clear that, if any of these payment dates are not met, you have reserved all rights to proceed with legal action. With that kind of written agreement and your file copy of your eviction notice, you should not have to issue another 3-day notice if the tenant defaults on a payment plan. All of the above notwithstanding, agreeing to a payment plan is not a good idea. Unless the tenant can show to your satisfaction that enough money will be coming in to allow payment of past-due rent

as well as future rent and all other anticipated expenses, you are better off to take what you can get at the time, agree to no payment plan, and proceed with eviction. If the tenant offers the over-due rent in full within the three days, you must accept the money. At that point, the legal situation is as if the notice had never been given. If you still want the tenant to move out, for whatever reason, you must serve a regular eviction notice. (See "30-Day Notice" subsection above.)

14/30-DAY NOTICE OF TENANT NONCOMPLIANCE

Sometimes you will get into a rental relationship and discover that something is wrong - the tenant isn't paying on the security deposit as promised, the tenant has broken something and should be paying for it or repairing it, an unauthorized pet or person has been moved in, or the neighbors are complaining about noise. You don't mind having the tenants stay if it is taken care of; otherwise, they will have to go.

A 14/30-Day Notice of Tenant Noncompliance is probably the thing to do. Kansas law says that, if a tenant does not comply, a 14/30-Day Notice of Noncompliance can be used to terminate a lease. It can also serve as a warning to a month-to-month tenant.

If there is only one violation, your notice might read as follows:

(Date) _____
Dear (Tenant) _____: You have been violating our rental agreement and your legal responsibilities as a tenant at (Address) _____ by (Violation) _____. If the situation is not corrected within 14 days of your receipt of this letter, you must move out no later than 30 days after receipt. If the situation is corrected, you may stay. (Option: If you would like to discuss this matter, you can reach me at (Address & Phone Number) _____.)
Sincerely, _____ (Landlord)

If the tenant has more than one violation, your notice might read as follows:

(Date) _____

Dear (Tenant) _____: You have been violating our rental agreement and your responsibilities as a tenant at _____ Address _____ in a number of ways. If the following situations are not corrected within 14 days of your receipt of this letter, you must move out no later than 30 days after receipt. If all situations are corrected – and ALL, not just some of them, must be corrected – you may stay.

(Violations)

(Option: If you would like to discuss this matter, you can reach me at

(Address & Phone Number) _____)

Sincerely, _____
(Landlord)

You may substitute actual dates for the 14- and 30-day language. If a tenant gives this type of notice to a landlord, it is tied to rent-paying dates. When a landlord gives this type of notice to a tenant, it can be in any thirty-day period; there is no tie to rent-paying dates.

If the tenant corrects the violation/s (pays money, makes a repair, whatever) or makes a “good faith” effort to correct within the 14 days specified in the notice, the tenant gets to stay. It is as if the notice had never been served. You do have the right to insist, if there are multiple violations, that all violations are taken care of, not just one or two.

The law goes on further to say that if the tenant corrects the violation/s within the 14 days, then a violation recurs after the 14 days, the landlord can immediately serve an irrevocable 30-Day Notice to terminate (regardless of rent-paying dates). You would be responsible for the security deposit return as in any normal move-out (see Security Deposit chapter).

HOLDOVER POSSESSION

If a tenant has given or been given a legal notice to terminate and does not get out on time, the landlord can sue that tenant for up to 1-1/2 times a month’s rent or 1-1/2 times the landlord’s cash losses, whichever is

greater, if the tenant’s holdover is “willful and not in good faith.”

This is an important point to note in eviction notices if you think your tenant needs a little “encouragement” to get out on time.

It is also important to make sure your attorney is aware of this provision in the law so that if you ever have to file legal papers and go to court on an eviction, you include this penalty in your suit.

HOUSING PROVIDED TO EMPLOYEES

A minimum of ten days’ written notice to terminate is required if a tenancy is employment-related. (Employment-related tenancies are not included under the Kansas Residential Landlord and Tenant Act but are covered in K.S.A. 58-2504.)

NO RETALIATION

The City of Topeka has a local ordinance which says specifically that no landlord may evict, raise the rent, or decrease services to a tenant within six months after the tenant has (a) made a valid complaint about health and safety to the landlord, (b) made such a complaint to a governmental body charged with enforcing related statutes, and/or (c) has been actively involved in a tenant organization. This ordinance is enforced by the City Attorney’s office and through Municipal Court; it also can be used by a tenant as a defense in a state court.

The Kansas Residential Landlord and Tenant Act, though it is a little bit more vague in the writing, says basically the same thing, though it does not specify a time period.

Presumably, aside from specifically outlawing getting back at people for complaints that they think are legitimate, these laws provide a “cooling-off” period for disputes between landlord and tenant.

No Lock-Outs Or CONSTRUCTIVE EVICTIONS

The law provides that the notices reviewed above are the proper ways to handle evicting a tenant. It recognizes no other. Such actions as shutting off the utilities, padlocking the door, changing the locks, putting the tenant's things out in the yard or the street, or even wild suggestions such as taking the doors off the hinges or removing windows are specifically illegal in Kansas. In fact, the Landlord and Tenant Act provides that the landlord could be liable for 1-1/2 times the rent or 1-1/2 times the tenant's actual financial losses, whichever is greater, as a penalty. In addition, it says that if the landlord does anything like the actions mentioned above, the tenant may move out immediately, recover actual "damages" (money losses), and have the security deposit returned as it would have been under normal circumstances, within 30 days.

A situation like this where a landlord in Junction City barred his tenants from the property after they left one morning ended up in the Kansas Supreme Court in June of 1983. The court awarded the tenant in that case \$1000 in punitive damages against the landlord because the landlord's action was considered "wanton and willful." Be careful on this one.

The actions mentioned above are considered in legal terms to be "constructive evictions" – evictions arranged by action rather than the legal process. Even though you may not like your tenant and want your tenant to move, it is more straightforward and more legally acceptable to simply "bite the bullet," get out your checkbook, hire an attorney and do it right.

WHEN NO NOTICE IS NECESSARY

If the lease has a specified termination date and does not have clauses about renewal, then, unless other arrangements are made,

the relationship legally terminates on that final date. No notices are necessary from either landlord or tenant in this case. In fact, if either party expects that the tenant will stay on from month-to-month or for a similar term, it is a good idea to exchange notices to that effect at least thirty days before the end of the rental period.

In cases where tenants cause extreme damage to property or have threatened the lives of others, it is possible to ask them to leave immediately and to proceed with legal action if they don't.

Finally, if the landlord/tenant relationship does not exist, no notice to quit is required. This could happen, for instance, in the case of "squatters" where you either find someone living in property that you thought had been vacant for some time or you discovered that the people to whom you rented the property have gone and left other people in their place. In these cases, you can approach the problem either from a civil or criminal point of view.

From the civil point of view, you have your lawyer file suit against the people for immediate possession of your property, claiming that they are not your tenants and have no right to be there. You ask for whatever reasonable amount of money they might owe you in rent and for other expenses based on the situation. From the criminal point of view you could file a police report or approach the local county or district attorney's office and ask them to prosecute the people on grounds of trespassing because they have no legal right to be on your property. If you use the criminal remedy to get them out of the property, you can still use the small claims procedure or other civil remedies to collect some money.

GUESTS

Tenants have the right to have guests in their homes for reasonable periods of time unless the rental agreement specifically prohibits company. The problem is trying to decide when a guest becomes a tenant. A rule of

thumb to use is that a guest would become a tenant after being in residence for thirty days or more. If a tenant has a guest who, for instance, stays regularly two or more days per week but has another residence where he or she receives mail and does other personal business, then you may not be in a position to say that this person has become a tenant.

If your tenant has taken in a guest who, in your opinion, has become a tenant, you can give a 14/30-day notice specifying that, if the other person is not gone within fourteen days, both of them must be gone in thirty OR you could take action against the person whom you do not consider your tenant as mentioned in the "Where No Notice is Necessary" subsection. If you do not have a written rental agreement specifying who can live in the property, you may find that you have to take eviction action against everyone in the property because you can't prove who is your tenant and who is not.

DELIVERING NOTICES

First make sure you date and sign any notice and keep a copy for yourself. Your copy can either be a hand-written copy that is exactly the same, or, preferably, a carbon or photo copy. Your signature does not have to be notarized.

You can write a notice yourself and you can "serve" it yourself. The law recognizes a number of ways to deliver.

Serving the notice in person is legal and is usually quick and effective. You go up to the tenant's door and simply hand the notice to the tenant or anyone who resides at the property who is over the age of twelve years. (The person must reside at the property, not simply be there.)

If your tenant is not home or will not answer the door, you can post the notice on the door by tacking or taping it. If you think you are going to have any trouble with the tenant

claiming that the notice was not received (saying it must have blown away or some such story), take an impartial witness along with you to testify that you did in fact either hand the notice to someone or leave it in the door at the specific day and time. Since the law regarding landlord entry does not allow you to enter the tenant's property without permission unless there is an emergency, going into the dwelling unit and leaving the notice on the kitchen table or somewhere else inside is not advisable.

Certified and registered mail are often considered to provide the best proof of service. One problem with this method of serving is that often tenants who are expecting trouble will not pick up or accept their letters. Then, after two or three weeks, the mail is returned to the sender. On the other hand, you get a signed receipt as proof of service or your returned letter as proof of a "good-faith" attempt to serve. Some judges will consider an unsuccessful attempt at certified or registered delivery as adequate service; some will not.

The law neither encourages nor disallows the use of regular mail. Most courts accept the "mailbox rule" whereby, if you say you mailed a notice, the court will assume the tenant received it, even if the tenant denies receipt. Having a witness to your posting of the letter can help in such cases; on the other hand, some people's mail does get stolen. It is possible to get a "Certificate of Mailing" for a small fee if you mail a letter at the post office.

If you have a problem tenant that you fear will not accept service and you want to ensure "good service," you can try dual service. Serve duplicate notices both at the door and by regular mail or by regular mail and certified or registered mail.

THE EVICTION PROCESS

A proper 30- or 3-day notice must have been served before your attorney can start the court process to regain "possession" of your property for you and to collect any money that

is due. Up until this point, you can handle all notices and service yourself, although, for a fee, your attorney can do that for you.

If your tenant has already responded to your eviction notices by moving out but still owes you money, you can have your attorney collect for you. The Small Claims Court option would also be available. You cannot get an eviction order in Small Claims Court, but you can get a judgment for unpaid rent and/or other money or items the tenant owes you to the value of \$1800. You can do this yourself. (See Small Claims Court chapter for process.)

Your eviction action will probably be in Limited Actions, a division of the court at your county courthouse. Although state law does not require that you be represented by an attorney, it is advisable. The clerks in the courthouse are not authorized to assist you in preparing the complex legal papers that can be involved in such a suit, nor are they supposed to advise you on court procedure. If you want to try to represent yourself, it would be advisable to at least pay the money to have an attorney advise you on how to go about the process and how to fill out the papers. (See "How to Shop For An Attorney" in this handbook.)

It is a good idea to already have an attorney in mind and have this attorney ready to file as soon as the final day of an eviction notice is up. The sooner you file in court, the sooner the eviction action will be over. For that reason, you want to make sure that you have an attorney who will act promptly on your case.

The legal papers that your attorney draws up should probably include a request for the following:

1) Immediate return of possession of your property to you (known as a "writ of restitution") This is the "eviction" part.

2) Payment of any money due you - This usually includes any past-due rent and a request that the tenant pay the rent on a per-

day basis as long as the tenant stays in possession of the property. This may also include a request for other money that the tenant owes the landlord because of damage to the property or other losses the landlord has suffered.

3) Hold-over possession charges where the tenant is still in property The law provides that landlords can collect one and a half times a month's rent or one and a half times their actual financial losses, whichever is greater, if tenants willfully do not move out at the end of legal notices to quit. The law does not provide for you to collect your attorney's fees and court costs from tenants in eviction cases. This money can help pay part of those expenses.

As soon as your eviction suit is filed, your attorney will be given a date and time for the "docket call" of the court. This docket date is normally about ten days from the filing of the suit and is basically a roll call. During the ten days, the court has the sheriff find your tenants and serve papers on them notifying them of what the suit is about and when they must appear in court.

Court procedures can vary a bit here. Some courts will go to great lengths to attempt to serve people personally; others instruct the sheriff to routinely tack notices on the door if no one answers. Both are considered legal service.

If your court is one that strives for personal service, it is important that you advise your attorney and/or the sheriff of any information you can think of regarding when and where to find your tenants.

Check with your attorney about the use of a "special process server" if you need speedy service and/or think you have a tenant who will avoid being served papers by the sheriff. The "special process server" process involves having your attorney do some extra paperwork with the court, having a judge appoint