
someone besides the sheriff (this could be a friend or neighbor of yours or someone your lawyer knows) to serve papers for you. That way you can help this person find your tenant, perhaps in odd places or at odd hours where the sheriff might not be quite as diligent in looking.

At docket call, the judge or a clerk will basically check to make sure that both you and your tenant are there and that there is still some dispute. If someone representing you does not show up at docket call, whether or not the tenant is there, the case will probably be dismissed "for lack of prosecution." If your tenant does not appear but you and/or your attorney do, your tenant will probably lose the case in what is called a "default judgment." In this case, unless there is something wildly unusual in your legal petition, the judge will award you whatever you have asked for.

If both you and the tenant appear, the judge or clerk will ask the tenant whether the tenant is aware of the charges and agrees that he or she is responsible. If the tenant says "yes," the judge or clerk will say something to the effect of, "Okay, you lose." As soon as your attorney records the appropriate "journal entry" in the file, that will be it. You will have a judgment for whatever you requested in your petition. If, however, the tenants object, saying that they don't owe certain money or they propose counterclaims against you, a date will be set for a trial. This trial, by law, in an eviction case, must be set within eight days of the docket call.

The tenant might have a claim against you or might just want the extra eight days to trial. If a trial occurs, the judge will hear both your testimony and the tenant's and, hopefully, will make a fair decision. Normally, the judge will order that the tenants move out, whether or not there are issues.

In complicated cases, judges sometimes decide whether or not the tenant can stay at the property on the trial day, then postpone the hearing on all the other issues until a later

date. If there is some dispute about whether a landlord should get the rent (for instance in a suit where the tenant has strong counterclaims about maintenance of the property), the judge may order the tenant to pay the rent into the court instead of to the landlord until the rest of the issues are decided.

FORCIBLE DETAINER ACTION

If the judge has ordered your tenant to move out and the tenant does not go, the court can assist you with move-out. A form called "Writ of Restitution and Execution" is needed for this. It is often filed at the same time the journal entry is entered. There are no extra court costs for this procedure.

What generally happens here is that the judge orders the sheriff to assist you in a "forcible detainer" action. The sheriff, by law, has ten days to carry out this order.

The sheriff goes out the first day or two of the ten days to see if the tenant's belongings are still there and, if so, to serve the Writ of Restitution and Execution on the tenants or the property. If the tenants insist that they can be out by the end of the ten days, the sheriff may leave and come back on day nine or ten to see if they are gone and only proceed with the forcible detainer action if the tenants are still in possession. In some counties, the sheriff waits and checks with the landlord by phone on the eighth or ninth day to see if the tenants are still there, making arrangements for entry and action at that time if it is still necessary. Some act the same day.

Depending on the county, the sheriff may personally move the tenant's things out, possibly even renting a truck or some vehicle and hauling the things away to storage. More often, what happens is that the sheriff shows up and makes the tenants leave the property, bars them from coming back and gives possession of the property to the landlord. This can include simply moving the tenant's belongings out of the property onto the lawn; it can mean mov-

ing them into an adjacent structure such as the garage or storage; it can include hauling the property out to some other storage facility; and it can include hauling it to the dump and throwing it away.

DISPOSAL OF LEFTOVER POSSESSIONS AFTER ABANDONMENT, SURRENDER, OR EVICTION

Where there has been an abandonment, or where the tenant has been removed as a result of a forcible detainer eviction action, or where a tenant has given or received a notice to quit and has left as expected and has left items in your property, Kansas law spells out a procedure for holding and then disposing of this property.

First, the law says to collect all the personal property and put it in storage. You must hold it at least thirty (30) days. "What if it is trash or junk?" you say. Use your judgment. If you think there is likely to be any question at all, you may want to consult with your attorney first. At least, take some photos of what it is that you're disposing of so that later you can prove to a judge or someone else that it truly was broken-down junk. It is also a good idea to make an item by item inventory specifying the items and their condition.

Next, within fifteen days of when you plan to dispose of the items, you need to have a notice published in your local general circulation newspaper stating the name of your tenant, a brief description of the property you are holding, and an approximate date (at least thirty days after the date you took possession of the property) after which you plan to dispose of the property.

The ad may read:

Abandoned property of (Tenants Name), (Address of Rental): (description of items, i.e., chair, shelving, W/D, small TV, misc.) will be disposed of if not claimed by (Date to be Disposed).

Then, within seven days after your notice is published, you need to mail a copy of the notice to the tenant at the tenant's last known address that you have. It may be your rental unit, but the Post Office may have a forwarding order. If the letter is not returned to you by the post office, it will be legally presumed that the tenant got it. If it is returned to you, then it will be proof that you did attempt to send it. Use certified mail for better proof.

Enclosing a personal note along with the published notice is optional.

The reason for the notices listed above is so that any "secured creditors" such as the owners of a rented TV or stereo or rented furniture can come and claim items that belong to them after showing appropriate proof. (You have the right to charge secured creditors reasonable moving and storage expenses for their items.) It also gives the tenant a chance to claim the items himself or herself. If the tenant arrives to claim the items anytime before the thirty days are up, the landlord must return them to the tenant as long as the tenant pays the landlord for the expenses of taking and holding the property, running the ad, and any other amount due from the tenant to the landlord (such as rent or damages or court judgments). After thirty days are up, as long as the above requirements have been met, the landlord has the right to sell or dispose of the property (keep it, take to the dump, etc.). The law spells out the fact that the landlord can apply the proceeds from the sale of the property first to the debts that are due him or her from the tenant, and, if there is profit left over after all those debts are paid, the landlord has the right to keep the money.

Note: Though the law allows landlords to refuse to release possessions if the tenant cannot pay, many landlords opt to release the possessions anyway simply so the items are gone and there is no further hassle with them. It's up to you.

FRAUDULENT ACTION

If someone leaves owing rent money and you think that the person did this on purpose and never wanted or intended to pay you, there

may be an opportunity to pursue that person through criminal charges. Contact your county District Attorney's office, explain the situation, and see whether they feel it would qualify for prosecution.

References: K.S.A. 58-2504, 58-2509, 58-2510, 58-2542, 58-2552, 58-2560 through 58-2572; Court Process (Forcible Detainer), K.S.A. 61-3801 through 61-3808; Employment Related, K.S.A. 58-2504; Liens, K.S.A. 58-2565, 58-2567; Lock-Outs, K.S.A. 58-2563, 58-2567, 58-2569; Retaliation, K.S.A. 58-2572, City of Topeka Code 82-272; Service of Notices, K.S.A. 58-2510, 58-2550, 58-2554, 58-2562, 58-2563, 61-2907, 61-3003 through 3006, 61-3803; Squatters, K.S.A. 58-2509, 58-2511; Collecting Judgment, K.S.A. 61-3604 through 61-3611, 60-729 through 60-744; Public Housing "One-Strike" rules, HUD regulation 24 CFR 966.4; 2002 United States Supreme Court case **Rucker v. Davis** upheld HUD "one-strike" eviction of tenants; 1983 Kansas Supreme Court case **Geiger v. Wallace** established punitive damages in constructive eviction; 1986 Kansas Court of Appeals case **Davis v. Odell** established that landlords could be liable for damages if possessions are not returned without reservation after forcible detainer action and 2003 **Statewide Agencies, Inc. v. Diggs** clarified a landlord's right to dispose of property acquired through eviction action; Model 3-Day, 30-Day, and 14/30-Day Noncompliance Form Notices can be ordered from Housing and Credit Counseling, Inc.

MOLD CONTAMINATION

The issue of mold contamination in housing has become an issue of concern. Kansas Department of Health and Environment officials say to be concerned but not alarmed. You can keep informed about this issue and the most current information available by going to the following websites:

Environmental Protection Agency – www.epa.gov/mold/moldguide.html
Center for Disease Control – www.bt.cdc.gov/disasters/mold/protect.asp