
RENTAL AGREEMENTS



Kansas law defines a legally enforceable “rental agreement” as all agreements between the tenant and landlord, written or verbal. A rental agreement can be from month-to-month or for a specific term such as six months or a year. A verbal agreement cannot be for more than a year.

In all cases, whether or not there is a written agreement, the landlord and tenant are subject to the laws of the state of Kansas and any governmental subdivision. This includes the requirement for a written move-in inventory in **every** rental relationship. (See chapter on Move-in Inspections.)

LEASE VS. NO LEASE

You have probably heard many landlords say, “A lease is not worth the paper it’s written on.” In terms of having absolute assurance that tenants will stay as long as they say they will or you want them to, it’s true that a tenant’s signature is no better than his or her word. And, no matter what kind of penalties you write into a lease, Kansas law generally lets you collect only for your actual losses, no more.

A written lease can make your rental relationships clearer and more comfortable through its recording of promises and agreements between tenant and landlord. A written lease can include more crime-free and drug-free language and also give you additional leverage in getting problem tenants out. A long-term lease can give you greater ability to collect advertising expenses if someone moves out early, or vacancy or utility expenses if someone moves out at a bad time of year and the unit is hard to re-rent.

IF THERE IS NO WRITTEN LEASE

Verbal rental agreements are considered to be month-to-month agreements unless you specify otherwise. It’s important to be clear

in your agreement with your tenant if you decide that the agreement is every two weeks or week-to-week. If you are allowing your tenant to pay more than once a month, but you consider the rental agreement to be month-to-month, you need to make that clear.

Unless otherwise specified, Kansas law says that the rent date is assumed to be the first of the month. You need to state to your tenant when you enter into the rental agreement what the rent date will be. The rent receipt will be the key to backing that up. To protect yourself against misunderstanding, always indicate the appropriate rent period somewhere on the rent receipt so that it is clear what the rent date was. If the tenant is moving in in the middle of a rent period and you have a preferred rent date and rent period, you can pro-rate the rent for the first month, indicating what dates were covered and then start the full rent at the first full rent period.

You need to specify how the rent is to be paid – check, cash, or money order (if you care) – and whether it is to be delivered or sent to a certain address by the tenant or picked up by you or your agent. Kansas law says that unless you specify otherwise, you are responsible to pick up the rent from the tenant at the property.

Kansas law requires that the tenant be informed in writing of the name and address of the owner or the person authorized to manage the property on behalf of the owner. It is a good idea to offer at least one phone number as well. The law further requires that the information be kept current in writing to the tenant if the ownership or management changes.

IF THERE IS A LEASE

Since you are likely to be the one offering a lease (or “contract” or “rental agreement,”

whatever you call it), take some time and find or write one that you are comfortable with. Your lease does not have to be long but it should cover all aspects of the tenancy, mentioning any things that are particularly important to you. Though you can draft your lease agreement yourself, it is a good idea to have your final product checked by an attorney so that you know what you have included there is legal.

Some things to make sure to include:

- **name and address** of the owner or person authorized to manage the property
- **phone number(s)** for landlord and maintenance
- **clear listing** of what is and is not being leased to the tenant for exclusive use (dwelling, yard, parking space or garage or carport, basement, certain appliances, etc.)
- **listing of names** of all tenants, saying also that no other tenants are allowed without permission of the landlord
- **the amount of rent**, due date, and how rent is to be paid; also which utilities are the responsibility of the tenant
- **the term of the lease** (month-to-month, six months converting to month-to-month, etc.)
- **requirement that landlord be notified** if tenant plans to be gone more than seven days
- **security deposit** cannot be used to cover expenses during the course of the tenancy
- **special prohibitions** (pet and noise policies, illegal activity as cause for eviction, etc.)
- **special agreements** (See examples.)
- **spaces** for tenant(s) and landlord and possibly a witness to sign

Things which must not be included (by law):

- **"exculpatory clauses"** (evidence or statements which tend to clear, justify or excuse a defendant from fault or guilt) which say that the landlord is not liable for damage or personal injury to the tenant, the tenant's guests, or the tenant's property
- **"confession clauses"** in which the tenant admits guilt in advance to any charges for damages in court

- **clauses which say the tenant will pay the landlord's legal fees** if they ever go to court
- **"as is" or "disclaimer of duty to repair"** clauses which say that the landlord is not responsible for making repairs which Kansas law requires the landlord to do
- **clauses which permit the landlord to enter** the property at any time without notice
- **clauses which allow the landlord the right to evict** the tenant without proper notice
- **clauses which allow the landlord to take the tenant's personal possessions** if the tenant does not pay the rent.

It is possible to make changes in leases. If you and your tenant agree, cross out what you don't want, write in what you do want, and initial and date in the margin on both copies. If you want to add something, write or type it in on the lease itself above the signature, then date and initial the addition. If there is not room, add another page. Each of you should get a signed copy.

When you have a written rental agreement, any later changes or additions should be in writing also. Our legal system expects that, once any part of an agreement is in writing, all of it should be in writing to be legally binding.

PET PROVISIONS

Decide what your policy is and stick with it. Legally, through leases, you can allow some tenants to have pets and not others. As a management practice though, that's not a good idea unless you have some clear guidelines everyone must follow. Don't forget that some people come up with some pretty weird pets!

Some possibilities:

No Pets If you say this in a lease, be sure you don't later give verbal permission or "overlook" the fact that someone has a pet. Make sure that what is in writing reflects reality. You may need to further define this also. Does this mean "no cats or dogs" or "no pets" at all?

Limited In your lease or rules, you might want to say something like "No more than two caged birds. Fish limited to one 20-gallon tank. No other pets allowed."

Size and Weight Limits Rather than setting general limits, you might want to say, "Dogs no higher than 14 inches or weighing more than 20 pounds full grown," or "Tenant must be able to easily carry pet."

SPECIAL AGREEMENTS

Whether your general rental agreement is written or verbal, if some specific agreements have been arranged between the tenant and landlord, it is a good idea to have these in writing for the protection of both parties. Such agreements include special allowance for a certain pet or that no pets are allowed, who is responsible for lawn mowing or snow shoveling, where a truck or bus used in a tenant's business can be parked, permission to provide day-care in the home, etc. The law indicates that any agreement requiring the tenant to take care of maintenance, repairs, alterations, or improvements must be in writing.

IF THE TENANT OFFERS YOU A LEASE

If you have not offered a written rental agreement, your tenant may want to have one. If a tenant offers you a written rental agreement, try not to make any response immediately. Take the agreement and say you will look it over. That way, you have time to think about whether or not you want a lease and to consider the particular lease privately when it is convenient for you.

Kansas law provides that if a tenant offers the landlord a signed lease, whether or not the landlord signs and returns a copy of the lease to the tenant, if the landlord accepts rent "without reservation," the lease will be binding on both parties for a term of as much as a year. What this means is that, if a tenant offers you a signed lease and you want to

negotiate it further or reject it, it is important that you write a letter or note to the tenant saying so by the time you accept the next month's rent. This note can be on the rent receipt. It should clearly say that the rent is accepted "with reservation" and that the offered lease has not been signed by you. You do not have to accept a lease that a tenant offers you.

IF THE TENANT DOESN'T SIGN THE LEASE

Likewise, if you offer the tenant a signed lease which the tenant does not sign and return, then the tenant pays rent "without reservation," the lease will be binding on the tenant for its term or a year, whichever is less. If the tenant does express "reservation," then your rental agreement would continue as month-to-month or whatever it had been before until you can agree.

PURCHASE OF TENANT-OCCUPIED PROPERTY

If you purchase a property where there are already tenants in place, you want to make sure of the rental agreement situation. As a practical matter, what normally happens is that when the purchaser acquires the business property, the purchaser also acquires its assets, debts and obligations. Therefore, you need to get from the former owner and confirm with the tenant the type of lease or rental agreement in effect. In Kansas, the prevailing consensus is that where the tenants in place have a term lease or rental agreement with the previous owner for a definite term (i.e., 3 months, 6 months, 9 months, 12 months, etc.), both the purchaser and tenants are obligated to honor the terms of the lease or rental agreement until it terminates.

In situations where a property is purchased and the purchaser does not wish to continue the rental relationship with tenants who have term leases or rental agreements, the use of what is called the "buy out" is an option that

may be considered. This is where the purchaser and the tenant mutually agree to terminate the lease or rental agreement on the condition the purchaser covers the reasonable expenses for the tenant's relocation within the community and the

reasonable difference between the monthly rent the tenant was paying (difference can be \$100 or more per month) and that to be paid at the new residence. Agreements should be in writing and copies retained by all the parties involved.

References: K.S.A. 58-2543 through 58-2547, 58-2549, 58-2551, 58-2556, 58-2558, 58-2565; Subleasing; K.S.A. 58-2511, 58-2512, 58-2515; Disclosure of Ownership, K.S.A. 58-2551, 58-2554; Kansas Contract Law (not detailed here) also applies; 1979 Kansas Supreme Court case **Chelsea Plaza Homes, Inc. v. Moore**, ruling that the Kansas Consumer Protection Act does not apply; Model Leases can be ordered from Housing and Credit Counseling, Inc.

LEAD-BASED PAINT REGULATIONS

Federal Environmental Protection Agency (EPA) and Housing and Urban Development (HUD) regulations concern lead-based paint for housing built before 1978. To comply, landlords must:

- Disclose the presence of known lead-based paint and/or lead-based paint hazards in the rental unit.
- Provide tenants with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards.
- Provide tenants with a federally approved lead hazard information pamphlet.

Tenants must sign a document confirming that tenants received the 3 items above.

Whenever repair/renovation work that will disturb an area of two square feet or more is going to be done, landlords must:

- Provide tenants at least 7 days' prior written notice.
- Provide a federally approved lead hazard information pamphlet again.
- Provide a disclosure form about the planned work.

Tenants must sign a document confirming that tenants received the above information.

Copies of the pamphlet and disclosure form may be obtained FREE by calling The National Lead Information Clearinghouse at (800) 424-LEAD. Copies may also be obtained on the Internet at www.epa.gov/lead/pubs/leadpdf.pdf or www.unleadedks.com. HCCI's Model Lease includes an approved disclosure form.

References: 40 CFR Part 745 and 24 CFR Part 35 published on March 6, 1996, in the Federal Register; Pre-Renovation Lead Information Rule, effective June 1, 1999.