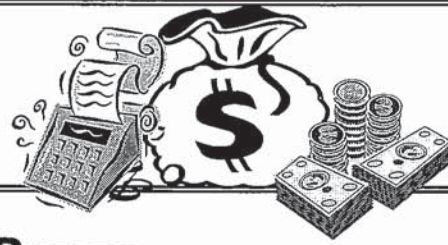

RENT, COLLECTION AND LATE CHARGES



SETTING RENTS

This book will not deal with how to set your rents in detail. In general, you should have an idea of what rent can be charged in your market and what income you need from your property before you ever purchase or otherwise acquire your rental property.

To check market rental rates, try three basic sources. **First**, check the newspaper or other published rental listing, make telephone inquiries, and actually go and look at properties that are available to see what kind of properties are available for what price. **Second**, ask other landlords what they are getting from their properties.

Third, if there is a Board of Realtors, Landlord Association, or other professional group in your area that might have some statistical information, you could check with them.

To judge what income you need, you should have a budget for each of your properties. Set for at least one year, this budget should show your expected expenses for purchase payments, utilities, taxes, insurance, routine maintenance, major maintenance reserve, etc.; expected off-sets such as tax deductions (depreciation, interest, etc.); tax shelter factors you may have; and desired cash profits, if any. Obviously, you may want to consult with your accountant on this.

Then, set your rents reasonably. Set too low, you may have trouble attracting the quality of tenants you desire. Set too high, you may have trouble attracting or keeping any tenants at all. Plan ahead so that you do not find that you need to raise the rent during the lease term (when you can't) or more often than once a year (which will cause you to lose good tenants).

RENT RAISES

Kansas law does not limit how much or how often rent can be raised. The only exception to this is that retaliatory rent raises and service decreases are illegal. (See "No Retaliation" subsection in Evictions chapter.)

Because a rent raise is similar to an eviction, you do have to give advance written notice. If the tenancy is month-to-month (written or verbal), at least 30 days' notice in writing in advance of a rent-paying date is required; week-to-week tenancies require a week's notice; etc. If your tenant is under a lease for a term of six months, a year, or whatever, and the lease does not have an "escalator" clause allowing you to raise rent during the term, you will have to wait until the lease ends or renews.

Check the lease to see if it has any language about rent raises and renewals. If not, and you want the tenant to stay after the initial term is up, treat it as a month-to-month from that time on and give notices accordingly.

It is a good idea to give more than the minimum notice required – for instance, giving 45 days' notice in a month-to-month tenancy. This gives tenants time to decide whether they can pay and, if not, time for them to give you a full legal 30-day notice to quit. (The pressure of forcing tenants to decide in one day whether to stay or move can have negative consequences for all involved.)

Changes in who pays for utility services and decreases in services provided by the landlord to the tenant are considered the same as rent raises in the eyes of the law.

COLLECTIONS

Rent should be paid in full on or before the rent-paying date.

It is important that if you accept late rent, you do so only "with reservation of all rights" in writing. Note on the receipt that the late rent payments are not acceptable and that the due date was "X." Note also that the payment is a partial payment for the entire rent period, not a payment in full for "X" number of days, with the remainder to be applied to the other. You don't want your tenants to get the idea that they can pay by the day. Also, the law indicates that continued acceptance of late payments of rent by the landlord can reduce some of the rights that you have to evict.

If you arrange a payment plan that is different from the rent period, it should be in writing to protect both parties. For instance, on a month-to-month agreement, you might agree that the tenant can pay half the rent on the 1st and half the rent on the 15th. Having this in writing would protect the tenant in that it would show whether the arrangement was indefinite or for a certain period of time; it would protect you by showing clearly that the tenancy is still month-to-month, not two weeks-to-two weeks.

LATE CHARGES

Late charges are optional. Common rates are either a \$10 or \$15 fixed charge after the 5th or the 10th of the month, or a \$1 per day charge that accumulates from the date the rent is due. To avoid "excessive interest" implications, it is advisable to limit a late charge to 10% of the monthly rent. An issue here is possible conflict with Kansas usury (excessive interest) laws.

Late charges can be useful to encourage tenants to pay rent on time but sometimes the reverse happens and tenants see it as

you expecting and okaying late payments. The law does not say anything for or against late charges on rental agreements in Kansas. You need to establish them in your original rental agreements or you will have to wait until the agreements renew (new leases or at least 30-day written notices) before you can start charging. You cannot charge late fees unless they are a part of the rental agreement.

If a tenant refuses to pay late charges, you can give regular or 14/30 type eviction notices. Late charges can be included in non-payment of rent eviction suits, but a judge may not allow you to pursue such a suit for non-payment of late charges alone. Court experiences on collecting late charges are mixed. Generally, judges tend to award no more than a month or so total to the landlord.

Some landlords encourage promptness by offering discounts for early rent payments or setting the rent due at a lower level if paid in full prior to the rent date. Some apartment complexes have "Early Bird" programs where prizes are awarded on a monthly or yearly basis to tenants who pay early.

RENT WITHHOLDING

Kansas law does not provide for tenants, of their own accord, to withhold or "escrow" rent. The law doesn't say they can, and it doesn't say they can't. Tenants who take such action risk eviction action from their landlords. (Ordinances in Manhattan and Atchison, Kansas, provide for escrowing of rent under certain conditions. These are the only exceptions to this rule to date.) Of course, if a tenant of yours tries this as a "last-resort" attempt to get you to make needed repairs, you should consider making the repairs, making adjustments (if appropriate) in rent due, and forgetting about it. A successful "warranty of habitability" counter-suit in an eviction case could be costly.

“Repair and deduct” is also not provided for by Kansas law unless there is a “good faith” written agreement between landlord and tenant. Again, use good judgment about the entire situation before you refuse such an arrangement. If you choose not to accept a rent deduction and go to court, it is usually cheaper for both tenant and landlord to settle disputes over repairs in Small Claims Court rather than through eviction suits.

Kansas law requires that the rent be reduced in proportion to the reduced value of the property until repairs are complete if a rental property has been damaged by fire or casualty so that its “use and habitability ...is substantially impaired...and continued occupancy (of part of the unit) is lawful....” In any situation where you allow a rent

adjustment, make sure there is a written record and that, when appropriate, you have copies of bills and receipts.

No DISTRAINT FOR RENT

Unless there has been an “abandonment” or the tenant has left possessions in the property after an apparent move-out (see Notice to Terminate from Tenant chapter for “Abandonment” and Evictions chapter for “Disposal of Leftover Possessions”), a landlord in Kansas does **not** have the right to take a tenant’s property and hold it until the tenant pays money that is due. The law provides **only** for legal action and court-approved collection procedures.

References: K.S.A. 58-2545, 58-2564, 58-2566, 58-2572; Damage or Destruction by Fire or Casualty, K.S.A. 58-2562; Liens, K.S.A. 58-2567; City of Manhattan Housing Code, Article VIII, Section 8-178 and City of Atchison Housing Code, Article 11, Section 34-19 provide for escrow of rent under certain circumstances; ordinances are available on the cities’ websites and can be ordered through Housing and Credit Counseling, Inc.

ILLEGAL ACTIVITY / "PARTY SHACKS"

Kansas law declares various activities "common nuisances" and provides that landlords and their properties could suffer serious restrictions or penalties if landlords are aware of the illegal activities and have not made "bona fide attempts to abate" them.

"Common nuisances" include the tenant using the property, or knowingly allowing others to use the property, for:

- gambling
- promoting obscenity
- promoting prostitution
- illegal drug use or sale
- habitual illegal sale or exchange of alcoholic or cereal malt beverages
- habitual illegal sale or exchange of cigarettes or tobacco products

If a person on the property is arrested for any of the above listed common nuisances, the attorney general, city, county, or district attorney may call for a hearing with the courts to determine whether the illegal activity occurred on the owner's property. The owner may be given notice of this hearing which will be held within 30 days of the notification. If the court finds through preponderance of evidence that an unlawful act occurred, the illegal activity shall void any lease that the tenant holds. Possession shall then return to the owner who may evict the tenant. If the owner does not begin the eviction process within 30 days after the court decision, the attorney general or the city, county or district attorney may proceed to file a petition of their own.

"Bona fide attempts to abate" are:

- notifying the authorities in writing of suspected activity
- 3-day, 14/30-day, and/or 30-day eviction notices to the tenant
- careful screening in the first place

Owner remedies provided by the law are:

- if a tenant has maintained one or more of the above "nuisances," or allowed someone else to do so and a court hearing affirms that, the rental agreement (written or verbal) becomes null and void and the landlord may then start eviction proceedings immediately

Possible penalties to landlords who do not make "bona fide attempts" when they are aware of "common nuisances" are:

- property can be padlocked for up to 2 years
- landlord may be required to post a bond with the court
- fine of up to \$25,000 (can additionally be imprisonment for up to a year in the case of liquor law violations)
- court could require landlord to pay legal fees of prosecution and court costs
- any costs assessed by the court against the landlord will be filed as a lien against the property involved

References: K.S.A. 22-3901 through 22-3904, 41-805.