

Kentucky Landlord Tenant Guide

March 1990

INTRODUCTION

The purpose of this booklet is to provide information that will be useful to landlords and tenants in Kentucky. Much of this information is based on the Kentucky Uniform Residential Landlord and Tenant Act of 1974, which was enacted to provide uniform regulation of residential rental agreements between landlords and tenants. It was hoped that furnishing statutory protection for the landlord and the tenant would encourage both to better maintain and improve the quality of housing.

While the Act is intended to protect all landlords and tenants, there are certain situations it does not cover: the occupancy of hotels, motels, and similar transient lodgings, for example, and occupancy by a landlord's employee whose right to live on the premises is contingent on his employment (KRS 383.535). Since the Act applies only to counties and cities which adopt it, its provisions are relevant only in those jurisdictions. Also, the Act prohibits any legislation by counties and cities which deals with landlord tenant matters, except the provisions in the Act.

The booklet is divided into two parts:

- (1) the lease and the security deposit, and
- (2) the landlord and the tenant -- duties and rights.

Section 1 covers types of leases, what should and should not be in the lease, the damage list, and the deposit refund. Section 2 outlines the rights and duties of the landlord and the tenant under the Landlord/Tenant Act and the Civil Rights Act of 1968 as amended. A list of organizations that offer legal assistant appears in the back of this booklet. The numbers and letters in parentheses in the booklet refer to the appropriate section of the Landlord/Tenant Act (KRS Chapter 383)

THE LEASE AND THE SECURITY DEPOSIT

The Lease

A lease is a contract, written or oral, whereby the owner of a parcel of real estate transfers the right to use and occupy his property to another in exchange for the payment of rent. The lease furnishes protection for both the landlord and the tenant; it should include the rights and duties of both parties. This section will cover: (1) types of leases, (2) what may be contained in the lease, (3) illegal items in the lease.

Types of Leases. There are different types of leases because there are different types of tenancies. Most residential leases are for a specific period of time -- sixty days, a year, or two years, for example -- and include a beginning date and an ending date. This type of lease is used for a "tenancy for years." If the duration of the tenancy is for one year or more, the Statute of Frauds requires that the lease be in writing.

Some leases do not have an ending date, but require only that rent be paid weekly or monthly. These leases, used for "periodic tenancies," are automatically renewed every time the rent is collected. Either the landlord or tenant may end such rental agreements by giving the other written notice. In the case of a week-to-week tenancy, only seven days' notice is necessary, while at least thirty days is required under a month-to-month contract.

The "holdover tenancy" is one in which the lease has expired but the landlord allows the tenant to remain on the premises for an unspecified period of time. In this "holdover tenancy," no date of termination is set, and the holdover tenant is obligated to make rent payments as required under the original lease. The tenancy may be ended without notice if the rent becomes ten days overdue; if either the landlord or the tenant ends the tenancy for any other reason, ten days' written notice is required.

If the tenant remains in the dwelling unit without the landlord's consent after the lease has expired ("tenancy at sufferance"), the landlord may resort to legal action to force the tenant to move. If the court then rules in the landlord's favor, the landlord may collect up to three months' rent or three times the actual damages, whichever is greater (KRS 383.695).

Note: Any time the Act requires that notice be given either to the landlord or tenant, the notice should be in writing and a record of all correspondence should be kept. If the notice cannot be hand delivered and a written acknowledgment obtained by the receiving party, it should be mailed by certified or registered mail to guarantee its receipt (KRS 383.560).

What May be Contained in the Lease. Although not required by law, when constructing a lease it may be useful to include the following items for the benefit of all parties involved:

- * the amount of rent, when and how often it is due, and any refund provisions should the tenant move

- * the date the tenant may move in

- * the number of persons allowed as tenants

- * the amount of security deposit, if any, and the conditions under which it will be returned

- * responsibility for payments for heat, electricity, water, gas, telephone, and garbage removal

- * responsibility for repairs

* rules about pets, musical instruments, stereos, t.v. antennas, washers, dryers, etc.

* responsibility for yard maintenance

* terms under which the landlord may inspect the premises, and

* parking availability and restrictions.

A lease may also provide for any additional rights or obligations of either the landlord or the tenant or anything else not prohibited by the Landlord/ Tenant Act or any other law (KRS 383.565).

Illegal Items in a Lease. A lease may not legally state that a tenant:

* agrees to waive any of his rights under the Landlord/Tenant Act,

* agrees to pay the landlord's attorney fees, or

* agrees not to hold the landlord liable for any violation of the Landlord/Tenant Act (KRS 383.570).

The Security Deposit

Landlords often require security deposits to protect them from losing money on damages caused by their tenants. By agreeing to refund the deposit if the property is not damaged, the landlord encourages the tenant to keep the unit in good condition. Many landlords require a deposit equal to one month's rent. The landlord must keep all tenant's deposit money together in a separate account used only for that purpose. Such account may be in any bank or other lending institution subject to regulation by the Commonwealth of Kentucky or by any agency of the United States government. In addition, each tenant must be informed as a part of the lease agreement of the account's location and number (KRS 383.580).

The Damage Lists. When a landlord requires a security deposit, he must make available to the tenant a complete list of any existing damage to the property, and a cost estimate for the necessary repairs before the tenant moves in. The tenant has the right to inspect the property to insure the accuracy of the list before he signs the lease. Although the law does not state this explicitly, this inspection should probably take place on the date of occupancy and with both the landlord and tenant present. (In this case, the tenant cannot be held accountable for any damage that might have occurred between the time that the landlord compiled the list and the time of the inspection.) If, on the date of occupancy, all parties find the list to be correct, they sign the list to show their agreement. If the tenant and landlord disagree about something on the list, the tenant may refuse to sign, and may present the landlord with a signed statement of dissent describing the items he finds to be incorrect. If the landlord does not

accept the tenant's amended damage list, the tenant may bring an action in District Court in an attempt to reach an agreement about the disputed items on the list.

When the tenant vacates the premises, the landlord makes another list of damages and the cost of repairing them. The tenant must sign to show that he agrees, or refuse to sign if he disagrees. Again, it is recommended that the final inspection be made on the date of vacancy and in the presence of both parties.

If the landlord is not available to inspect the property on the date of occupancy or vacancy, it is recommended that the tenant have one or more people present to verify in writing the condition of the premises. The landlord should have an agent appear on his behalf if he cannot be present during the initial or final inspection.

If the landlord does not put the security deposit in a separate account, or does not furnish the two different lists of damages as described, he is not entitled to retain any part of the deposit for any reason. Furthermore, the landlord may use the security deposit only for damages; he may not, for example, deduct portions of the security deposit to cover late fees or rent payments. (To protect himself against those losses, the landlord may set up an additional deposit account, separate from the security deposit, and should label accordingly and describe its function in the lease.) Although the landlord may be precluded from retaining any portion of the security deposit due to his failure to comply with the requirements of the Act, he is not prohibited from taking legal action against the tenant to recover for damages or losses. (KRS 383.580)

Deposit Refund. If the tenant moves out without paying his last month's rent, and does not demand a return of the security deposit within thirty days, the landlord may use the deposit as payment for rent. However, if the tenant moves out having paid all rent due, the deposit must be refunded if no damages have been incurred. In this case, when the tenant is entitled to a refund of the security deposit, the landlord should attempt to notify the tenant of the amount to be repaid. If the tenant has not responded after sixty days, the landlord may retain the deposit free from claim. Although the law does not require interest payments on security deposits, it is the Attorney General's opinion that, if the deposit has been kept in an interest-bearing account, the tenant should receive the accumulated interest unless the cost of damages exceeds the amount in the security deposit. If this occurs, the landlord may retain the accumulated interest to pay for damages. (KRS 383.580)

THE LANDLORD AND THE TENANT: DUTIES AND RIGHTS

This section outlines (1) the landlord's duties, (2) the tenant's duties, (3) the landlord's rights, and (4) the tenant's rights, according to the Landlord/Tenant Act. It also outlines both the landlord's and the tenant's rights in regard to discrimination.

Landlord's Duties

KRS 383.590 of the Landlord/Tenant Act requires the landlord to:

- * adhere to all building and housing codes that affect health and safety. Such codes include any laws or regulations pertaining to the habitability, construction, maintenance, occupancy, use, or appearance of the dwelling unit. (KRS 383.545)
- * make all repairs and do whatever is necessary to put and maintain the premises in a fit and habitable condition
- * keep all common areas of the premises in a clean and safe condition
- * maintain in good working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances (including elevators) supplied or required to be supplied by the landlord
- * supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1 (unless the tenant has control over this supply), and
- * provide written notice of the names of the manager and owner of the property (KRS 383.585).

The tenant and landlord may, if they wish, agree in writing that the tenant will be responsible for certain repairs, maintenance, alterations, and remodeling, or, in the case of a single family residence, that the tenant will supply water and heat. This agreement is valid only if it does not diminish the landlord's obligation to other tenants or is not for the purpose of evading the landlord's legally established duties.

From time to time, during the time during the term of the lease, a landlord may also adopt rules concerning the tenants use and occupancy of the premises (KRS 383.610).

Such rules are enforceable against the tenant only if:

- * their purpose is to promote the convenience, safety, or welfare of the tenants in the premises, or to preserve the landlord's property from abuse
- * they apply to all tenants in a fair and non-discriminating manner
- * they are sufficiently explicit in their prohibition, limitation, or direction of the tenants conduct to fairly inform the tenant of what must and must not be done to comply
- * they are not for the purpose of evading the legal obligations of the landlord
- * they are reasonably related to the purpose for which they are adopted, and
- * the tenant has written notice of them at the time the lease is signed.

A rule or regulation suggested any time after the lease is signed that substantially alters the original terms of the lease is not valid unless the tenant consents to it in writing. For instance, a landlord's decision to exclude pets from the property would substantially modify the intent of the lease. If the lease had already been signed, the rule would be valid only if the tenant agrees to it in writing. On the other hand, a rule not allowing loud stereo music after midnight would not change the original lease in a major way, so, in this case, the tenant's consent would not be necessary. Legal guidance is recommended if there is any doubt as to the applicability of this area of the Landlord/Tenant Act involving rules and regulations required by the landlord. (KRS 383.610).

NOTE: If the landlord sells the rental property, he is relieved of all liability as to any events that occur after the tenant is given notice of the sale. If the tenant finds any violation of the Landlord/Tenant Act after this time, the new landlord is liable (KRS 383.600).

Tenant's Duties

KRS 383.605 of the Landlord/Tenant Act requires the tenant to:

- * adhere to those building and housing codes affecting health and safety that apply to tenants
- * keep the premises as clean and safe as practical
- * dispose of all ashes, garbage, rubbish, and other wastes in a clean and safe manner
- * use all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other appliances in a reasonable manner
- * not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so
- * conduct himself (and require his guests to conduct themselves) in a manner that does not disturb the neighbors, and
- * not engage in any illegal or unlawful activity or conduct within the premises.

In addition, unless both parties agree otherwise, the tenant may use the rented property only as a dwelling unit; in other words, he may not operate a business from the premises (KRS 383.620).

Landlord's Rights

Right to Terminate Lease. If the tenant refuses to comply with the provisions of the lease or the Landlord/Tenant Act, the landlord is entitled to give the tenant written notice specifying the

violation and stating that the lease will terminate after fourteen days unless the offense is resolved. The tenant must be given a chance to rectify the situation and prevent termination of the lease. If the tenant makes the necessary repairs or pays damages within the allowed time, the lease shall not be terminated. If the violation reoccurs within six months, the landlord has the same recourse; however, in this case, the landlord is not required to give the tenant a second chance to undo the damages and may terminate the lease upon fourteen days' written notice.

In the special case when rent is overdue, the landlord must give the tenant written notice granting him only seven, and not fourteen, days in which to pay. If the rent is still unpaid after the seven days, the landlord may terminate the lease at this time (KRS 383.660).

The landlord's right to terminate the lease (when the tenant is in violation of any of the lease's provisions), is lost whenever the landlord accepts a rent payment with full knowledge of the tenant's violation. For example, the tenant may, in violation of a "no pet" clause, have a cat on the property. Once the landlord collects the rent with full knowledge of the cat's presence he may never terminate the lease claiming that the "no pet" clause has been violated (KRS 383.675).

In some situations, the landlord may prefer not to terminate the lease when a tenant refuses to remedy a situation in which the tenant's action has put the health and safety of others in jeopardy. If the tenant has failed to have the damage properly repaired, the landlord is entitled to hire someone to repair any damage at the tenant's expense fourteen days after the landlord has given the tenant written notice describing the problem. The landlord must give the tenant an itemized bill for the cost of the repair, and may collect the amount due with the next rental payment (KRS 383.665).

Right to Collect. If he desires to take the issue to court, the landlord may also recover compensation for actual damages due to the tenant's noncompliance with the provisions of the lease or the Landlord/Tenant Act, if such noncompliance is willful. Furthermore, this right to bring legal action does not end with the termination of the lease, or the tenant's removal through a forcible detainer action (eviction). The tenant is not free from liability simply because he is no longer in possession of the premises.

Right to Evict. A "forcible detainer" action, or eviction, is the landlord's only method for recovering possession when a tenant will not voluntarily relinquish a rented property after termination of the lease. For a complete description of the process, see the section on Forcible Detainer (KRS 383.200).

Right to Enter. A tenant must give the landlord consent to enter his unit in order to:

- * inspect the premises

- * supply necessary or agreed upon services, or

* show the unit to prospective or actual purchasers, finance companies, tenants, workman, or contractors.

The landlord may not enter the unit for any other reason without a court order, unless the tenant has abandoned the premises, unless an emergency arises, or except to make requested repairs or improvements. Except in an emergency, the tenant may require the landlord to give at least two days' notice of his intent to enter, and may allow the landlord access only at reasonable hours of the day (KRS 383.615).

Right to Know. A lease may require that the tenant notify the landlord if the tenant plans to be away from the property for more than seven days. The landlord must receive this notice no later than the first day of the tenant's absence. Failure to notify the landlord as required makes the tenant liable for any damages, such as those from vandalism, that might occur during his absence. If the unit is left vacant for more than seven days, the landlord has the right to enter, when reasonably necessary, whether or not an emergency arises (KRS 383.670).

Tenant's Rights

Right to Move in. Once the lease has been signed, the landlord may not charge rent until the tenant actually has possession of the premises. If the landlord does not allow the tenant to move in, the tenant may terminate the lease after giving at least five days' written notice. Upon termination, the landlord must return all prepaid rent, damage fees, and deposits. If the tenant does not wish to terminate the lease, and prefers to move onto the premises, he has sufficient grounds for taking the landlord to court and requiring the granting of possession of the premises. If the court rules that the landlord's actions were willful and not in good faith, the tenant may also recover the greater of three months rent or three times the actual damages, as well as reasonable attorney's fees (KRS 383.630).

Right to Terminate Lease. If the landlord fails to comply with the provisions of the lease or the Landlord/Tenant Act, although he has been given adequate notice of the problem or violation by the tenant, the tenant may initiate proceedings to terminate the lease (KRS 383.625). First, the tenant must deliver written notice to the landlord describing the landlord's act of noncompliance and stating that he will terminate the lease after thirty days if the situation described is not remedied within fourteen days. If the landlord either makes the necessary repairs or pays damage within the allotted time, the rental agreement may not be terminated. If the landlord fails to comply with the notice, however, and causes the tenant to move, the landlord must return all prepaid rent.

If the landlord again fails to comply with the lease or with the law within six months, the tenant has the same rights as before but may terminate the lease after fourteen days' written notice

rather than thirty days. The tenant does not have these privileges, however, if the problem has been caused by his or his guests' negligence or misuse (KRS 383.635).

If a tenant's unit is damaged or destroyed by fire or casualty to the extent that reasonable enjoyment of the unit is impaired, either the tenant or landlord may terminate the lease giving fourteen days' notice. The tenant may move out immediately, however, if he desires, and the landlord must return the unused portion of all prepaid rent (KRS 383.650).

Right to Deduct from the Rent. When the landlord fails to comply with the provisions of the lease or the Landlord/Tenant Act in a manner that affects the health and safety of the tenant, the tenant may make his own repairs and deduct the expenses incurred from the rent. Once the tenant has notified the landlord in writing of his intention to make the repairs at the landlord's expense, the landlord has fourteen days to comply. If no action is taken within the time allowed, the tenant may have the work done, paying the bill himself. After the tenant sends the landlord an itemized statement describing the work, the tenant may deduct the amount from the rent. Since the landlord's liability is limited, however, the tenant should be cautioned not to repair overly expensive items. The maximum the tenant may deduct is \$100 or an amount equal to one-half the monthly rent, whichever is greater. To avoid the possibility of being responsible for payment of the bill, the tenant should seek legal guidance if there is any question as to the applicability of this provision (KRS 383.635).

Right to Have Essential Services. If the landlord willfully fails to supply heat, running water, hot water, electricity, gas, or other essential services as stipulated in the lease, the tenant may give the landlord written notice stating the problem and may:

- * obtain the services and deduct the cost from the rent

- * go to court to recover damages for the amount the rental value of the property diminished due to the lack of services, or

- * move out until the landlord supplies the service. In this situation, the tenant is not required to pay rent to the original landlord for this period.

Once the tenant takes these actions, however, he forfeits his right to act in any other manner previously described. For example, once the tenant obtains an essential service himself that the landlord has failed to supply, and deducts the cost from the rent, he may not also terminate the lease for the same reason (KRS 383.640).

Right to Oppose Unlawful Eviction. If the landlord attempts to evict (i.e., bring a forcible detainer action against) the tenant for not paying the rent when, in fact, the rent was withheld because of the landlord's failure to satisfy his duties, the tenant has sufficient grounds to counter claim. In this case, the court might collect the rental money owed and distribute it between the tenant and landlord as it sees fit (KRS 383.645).

If the landlord unlawfully evicts the tenant or reduces any essential services such as heat or water, the tenant has the legal right to regain possession or terminate the lease and may, in either case, by bringing a court action, recover up to three months' rent as well as reasonable attorney's fees (KRS 383.655).

Right to Oppose Landlord's Retaliation. A landlord may never try to force a tenant to move by shutting off the heat, water, gas, or other essential service (KRS 383.690). A landlord may not retaliate by increasing rent, decreasing services, or evicting the tenant after a tenant:

- * complains to a government agency about a building or housing code violation that affects the health and safety of others

- * complains to the landlord about the landlord's failure to live up to his duties, or

- * joins a tenants' union or similar organization (KRS 383.705).

If the landlord has cut services, increased rent, or threatened eviction, and if the tenant has evidence of having made a complaint with the landlord in the past year, the court will assume that the landlord acted in retaliation. In fact, it will be up to the landlord to prove otherwise.

In spite of these provisions against retaliation, the landlord will always have the right to start eviction proceedings against the tenant if:

- * there is a violation of the applicable building or housing code caused primarily by lack of reasonable care by the tenant or the tenant's guests

- * the tenant does not pay the rent, or

- * the building must be demolished, altered, or remodeled in compliance with a building or housing code.

Discrimination

The laws dealing with discrimination in housing imply certain rights and duties for both landlord and tenant. A landlord is entitled to be selective in renting his property, but he may not be discriminatory in any manner as outlined in the Civil Rights Act of 1968, as amended. The landlord may screen applicants, in other words, to choose the best tenant possible, but he must not make his choice on the basis of race, color, religion, sex, national origin, or family status. Briefly, as applied to rental property, the Civil Rights Acts prohibits:

- * discriminating with regard to race, color, religion, sex, national origin, or family status, in terms or conditions of a sale or lease

- * advertising housing is available only to persons of a certain race, color, religion, sex, national origin, or family status

* denying that housing is available for sale or rent when it is

* inducing an owner to sell or rent by telling him that minorities are moving into the neighborhood ("blockbusting"), or

* intimidating or threatening anyone who has exercised his rights under the Civil Rights Act.

The Fair Housing Amendments of 1988 prohibit discrimination based on family status, i.e. children in a family, and requires certain landlords to cooperate with disabled tenants to make changes in the physical structure of the premises at the tenants expense, so the disabled tenant can utilize the premises as a dwelling unit. The tenant must also make reasonable financial assurance the premises will be returned to its original configuration. These rules are quite detailed. Your questions about them can best be answered by an attorney and an engineer or by HUD.

These provisions apply to the sale or rental of all housing except (1) privately-owned single family housing when a real estate salesperson is not used; (2) multi-family dwellings containing four or fewer units if the owner resides in one of the units; or (3) religious organizations or private clubs that give preference to members for dwellings they operate for other than a commercial purpose.

Any tenant who feels he or she has been discriminated against should dial toll-free 1-800-292-5566 or contact:

Kentucky Commission on Human Rights
332 West Broadway, Suite 700
Louisville, KY 40202
Phone (502) 595-4024 TDD (502) 595-4084
Toll-free 1-800-292-5566
Fax (502) 595-4801

ORGANIZATIONS THAT OFFER LEGAL ASSISTANCE

Appalachian Research & Defense Fund of Kentucky
218 W. Main, P.O. Box 567
Richmond, KY 40475
(859) 624-1394

Central Kentucky Legal Services
498 Georgetown St.
Lexington, KY 40508
(859) 233-4556

Tenant Services & Housing Counseling, Inc.
200 E. Main St.
Lexington, KY 40507
(859) 258-3960

Legal Aid Society of Louisville
425 W. Muhammad Ali Blvd.
Louisville, KY 40202
(502) 584-1254

Louisville Tenants' Union, Inc.
425 W. Muhammad Ali Blvd.
Louisville, KY 40202
(502) 587-0287