

KANSAS LANDLORD – TENANT LAW

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I. Introduction

- A. Kansas Residential Landlord Tenant Act governs legal relations between landlords and tenants – K.S.A. 58-2540 et seq.**
- B. Certain Lease Arrangements Not Covered (fraternity houses, farm tenancies)**
- C. Can Tenants invoke the KCPA? - No; Chelsea Plaza Homes, Inc. v. Moore, 226 Kan. 430 (1979)**
 - a. Residential Landlord Tenant Act controls and preempts the field of landlord-tenant transactions**

II. Are Unsigned Leases Valid? – K.S.A. 58-2546

- A. If tenants delivers signed lease with rent check and landlord cashes it, landlord is bound**
- B. If landlord delivers signed lease and tenant moves in and pays rent, tenant is bound**

III. Rental Agreement Requirements – K.S.A. 58-2547

- A. Act Prohibits Four Specific Practices**
 - 1. Agreements to waive rights under the Act**
 - 2. Agreements that authorize a person to confess judgment**
 - 3. Agreements to pay either party's attorney fees**
 - 4. Agreements to limit liability, except tenant may agree to limit landlord liability for common areas**

B. Security Deposits – K.S.A. 58-2550(a)

- 1. One month's rent**
- 2. If furnished, one and a half month's rent**
- 3. If pets, two months rent**

C. Fair Housing Act – 42 U.S.C. § 3604

1. Pets

- a. Reasonable accommodation under Act includes emotional support animals, which need not be individually trained**
- b. Warren v. Delvita Towers, 49 F. Supp.3d 1082 (S.D. Fla. 2014)(holding a County ordinance banning pit bulls was preempted by the FHA)**

IV. Pre Move-In

A. K.S.A. 58-2548 requires a joint inventory within five days of move-in

B. Important if landlord seeks damages after tenancy ends (presumption in favor of tenant if landlord does not do joint inventory)

V. Problems Occurring During Lease – K.S.A. 58-2553

A. Landlord Duties

- 1. Comply with Municipal Bldg./Housing Codes materially affecting health and safety (L.M.C. Chapter 5)**
- 2. Maintain Common Areas**
- 3. Maintain Electrical, Plumbing, AC, Heating**
- 4. O'Neill v. Dunham, 41 Kan. App.2d 540 (2009)**

Facts: Plaintiff falls and breaks leg; claims handrail would have prevented fall

Manhattan City Code required handrail

C/A reverses summary judgment and remands to DCt to determine:

- i. Did Landlord know or have reason to know lack of handrail materially affected safety;**
- ii. Did lack of handrail materially affect safety of all in the apartment who were there with consent of tenants**
- iii. Was Plaintiff present with the consent of tenants.**

B. Tenant Duties – K.S.A. 58-2555(a)

- 1. Comply with Bldg./Housing Codes**
- 2. Keep Premises clean and safe**
- 3. Remove Trash**
- 4. Keep Plumbing fixtures clean**
- 5. Use appliances reasonably**
- 6. Be responsible for damage caused by visitors/pets**
- 7. Be responsible for behavior of visitors/pets**

C. 14/30 Notices – K.S.A. 58-2559 and 58-2564

- 1. Required for Cause Evictions**

VI. Eviction

A. For Cause vs. Money/Holdover

- 1. Money**
 - a. Three Day Notice Required**
 - b. Tenant must pay entire amount within three days of receipt of notice**
 - c. If landlord accepts partial payment without reservation of rights, eviction is defeated – K.S.A. 58-2566**
- 2. Holdover Tenants**
 - a. If written lease ends, three day notice must be given**
 - b. If no written lease, 30 days notice, then a three day notice must be given**
- 3. For Cause Eviction**
 - a. Landlord must provide a 14/30 notice describing problems that materially affect tenancy**
 - b. Landlord must then give three-day notice**
 - c. Burden of Proof – “clear and convincing”**
- 4. Eviction Proceedings are bifurcated into possession and damages**
- 5. Tenant’s Personal Property Left at Premises – K.S.A. 58-2565(d)**

B. Practical Considerations

- 1. How much time is left in the term of the lease?**
- 2. Potential Loss of Other Tenants if Lease Violations are not addressed in a timely manner**
- 3. Landlord has a duty to mitigate damages – In re Estate of Sauder, 283 Kan. 694, 712 (2007)(Kansas has adopted the minority view)**

C. Security Deposit Return

- 1. Landlord must provide tenant with an itemized list of damage within 30 days after lease ends and return security deposit, minus deductions**
- 2. If landlord does not comply, tenant can recover portion of security deposit wrongfully withheld plus 1.5 times that amount**
- 3. Love v. Monarch, 13 Kan. App.2d 341 (1989)**
 - a. Tenant lives in roach-infested apt.**
 - b. Tenant leaves before lease term is up; requests return of security deposit**
 - c. Landlord refuses because tenant ended lease early**
 - d. Holding – Tenant entitled to return of security deposit times 1.5; court has no discretion and must award damages**
- 4. A & S Rental Solutions, Inc. v. Kopet, 31 Kan. App.2d 979 (2003)**
 - i. Tenant gives Landlord a \$900 security deposit**
 - ii. Tenant subleases house**
 - iii. After expiration of lease, both tenant and sublessee claim security deposit**
 - iv. Landlord files a declaratory judgment asking DCt to decide who is entitled to security deposit**
 - v. DCt rules tenant is entitled to \$215, plus 150% civil penalty**
 - vi. C/A reverses, holding Landlord did not “wrongfully withhold” security deposit**