

This information is for general information only - it is not meant to solve individual legal problems. The laws used in this publication apply only to Fayette County. In surrounding areas, other laws may apply. When court action is described in this brochure, it describes the Fayette District Court, currently located at 150 North Limestone, Lexington, Kentucky. NOTE: If you want to know more about your rights, or if you are having any problems, you should talk to a lawyer or one of the agencies listed at the back of this brochure.

DEFINITIONS

Boarder or Roomer - A tenant who shares a bathroom, kitchen, refrigerator, or stove with other tenants, and lives in the same building as the landlord.

Eviction - Being required to leave the rental unit through a legal process.

Familial Status - Is broadly defined to include any person 18 years of age or younger living with a parent or legal guardian, and includes pregnant women. As a general rule, two persons per bedroom is a reasonable occupancy standard, but there may be exceptions for babies under one year of age and otherwise.

Forcible Detainer - Getting a tenant evicted by going to court.

Handicap Status - Broadly defined to include a person with a physical or mental impairment that substantially limits one or more of his or her major life activities. This includes person with mental illness and those who are HIV positive. A landlord is justified in denial of housing to a person with a handicap only if the landlord can establish that renting to that particular person would be a direct threat to the health, safety or property of others.

Landlord - The person who rents property to another.

Lease - A contract between a landlord and a tenant outlining the terms of renting property.

Notice - Telling the landlord (or telling the tenant) something important.

NOTE: Always document the notice by either sending a written certified letter or delivering it in person to be sure it is received. Taping to the door may not be adequate notice. Keep a copy for yourself and be prepared to prove how it was given.

Retaliatory Action - When the landlord gets even with the tenant by forcing the tenant to move, raising the rent, or cutting off household services. (Household services include gas, electric, water, and heat in winter.)

Security Deposit - The money paid in advance to cover any damages (except normal wear and tear) caused by the tenant or the tenant's family or friends. The tenant will get this money back minus the cost of damages to the rental unit. If there are no damages, the tenant should get all of the money back.

Tenant - The person who rents property from another.

Tenant's Group - A group of tenants working together to improve their housing conditions.

URLTA - Abbreviation for the Uniform Residential Landlord- Tenant Act, KRS 383.505-715, the law that governs the rights and responsibilities of residential landlords and tenants in Lexington, Fayette County, Kentucky. Whether the lease is written or oral, most landlords and tenants of rental homes, apartments, boarding houses, and mobile homes in Fayette County are covered by URLTA.

URLTA does not cover the following types of living arrangements:

- ◆ Hotels or motels.

- ◆ Hospitals, nursing homes, dormitories, halfway houses, convents.
- ◆ Fraternal or social lodges.
- ◆ Tenants employed to work on the property where they live.
- ◆ Tenants who use the building and grounds mainly for farming.
- ◆ Condominiums, co-ops and land contracts.

DUTIES OF LANDLORDS AND TENANTS

The Landlord Must:

- ◆ Keep the unit safe and fit for human habitation.
- ◆ Make needed repairs.
- ◆ Obey the housing, health, and building codes.
- ◆ Keep common areas, halls and stairways, clean and safe.
- ◆ Keep all electrical, plumbing, heating, ventilating, and air-conditioning equipment in the building in good working order.
- ◆ Provide tenants with hot and cold running water at all times.
- ◆ Provide heat between October 1 and May 1.
- ◆ Give the tenant in writing the names of the manager or owner and the person who handles notices or complaints.
- ◆ Keep all security deposits in a separate bank account

NOTE: The landlord must tell the tenant where the account is held and the account number.

- ◆ Make a list of damages before the tenant moves in and after the tenant moves out with the estimated cost of repairing them and allow the tenant an opportunity to inspect the premises to determine the list is correct
- ◆ Try to rent the property if a tenant has breached a lease to minimize the money lost caused by the breach.

The Tenant Must:

- ◆ Pay rent on time.
- ◆ Keep the rental unit clean and safe.
- ◆ Obey the local housing, health and building codes.
- ◆ Keep the rental unit free of trash and garbage.
- ◆ Use all electrical, heating, ventilating, plumbing, and air-conditioning equipment properly.
- ◆ Be responsible for any damage done to the rental unit.
- ◆ Not disturb neighbors and not allow guests or family to disturb neighbors.
- ◆ Give proper notice to the landlord when ending the lease or repairing the rental unit.
- ◆ Let the landlord come in for reasonable purposes, after two days notice, or without notice in emergencies.

DISCRIMINATION

Local, state and federal laws prohibit discrimination that is based on race, color, religion, sex, national origin, familial status, handicap, gender identity or sexual orientation in the advertising for or leasing of, or in the services related to a residential dwelling unit.

A landlord must allow a disabled person to make reasonable modifications, at the expense of the disabled person, to the actual dwelling unit and the common areas of the premises to be rented, to afford that person the full enjoyment of the premises.

If you feel that a landlord, or a prospective landlord, has unlawfully discriminated against you, you should contact the LFUCG Human Rights Commission at 859-252-4931 or an attorney.

LEASING THE UNIT

BE SURE TO READ THE LEASE CAREFULLY BEFORE YOU SIGN IT.

A lease is a legal document. If a tenant does not do what the lease requires, the tenant may be sued, not just for past due rent but also for rent that may be lost through the end of the lease term. If more than one tenant signs a lease, all of the persons who sign (co-tenants) are legally responsible for compliance with the lease.

If any of the co-tenants fail to comply with the requirements of the lease including: Paying that tenant's share of the rent, then all of the co-tenants will have breached the lease, and all are responsible for the rent due the landlord.

Keep copies of all leases, notices, certified letters and return receipts, security deposit checklists, rent receipts; and any other rental records. They may be needed as evidence in court at a later time.

ARE ALL LEASE PROVISIONS ENFORCEABLE?

NO. The following provisions of a lease are not enforceable:

Making the tenant give up any rights held under the law.

- ◆ Limiting the landlord's duty to keep the rental unit in good repair.
- ◆ Limiting the tenant's rights to sue the landlord.
- ◆ Making the tenant pay the landlord's attorney fees in cases not allowed by the law.
- ◆ Making the tenant do or suffer anything that is unusually harsh or unreasonable.

DOES A LEASE HAVE TO BE IN WRITING?

No. An oral lease for less than one year is good for the amount of time for which the rent is paid. For example, if the tenant pays rent by the month, the tenant has the right to stay for only that month for which the tenant has paid rent. In all other ways, this oral lease is just like a written one.

If the tenant does not make an agreement with the landlord as to when rent is due, the tenant should pay rent on the first of the month.

HOW CAN THE TENANT OR THE LANDLORD END AN ORAL LEASE?

If the tenant pays rent by the week or is a boarder, the tenant or the landlord must give seven days advance written notice to move.

If the tenant is not a boarder or roomer and rents by the month, the tenant or the landlord must give 30 days advance written notice (one full calendar month) to move.

WHAT IF THE LANDLORD DOES NOT LET THE TENANT MOVE IN AFTER THEY HAVE AGREED TO A WRITEN OR ORAL LEASE AND THE TENANT HAS ALREADY PAID A SECURITY DEPOSIT?

This is illegal! If this happens, the tenant can end the lease after five days written notice and recover the rent and deposit paid.

If the tenant has not paid rent, the tenant does not have to pay until the landlord lets the tenant move in.

The tenant can also sue for possession and recover the damages the tenant suffered as a result. If the landlord kept the tenant out on purpose, the tenant can sue for the trouble this caused.

CAN THE LANDLORD GIVE THE TENANT NEW RULES AND REGULATIONS FOR LIVING IN THE RENTAL UNIT AFTER THE TENANT HAS MOVED IN?

YES. The new rules cannot create substantial changes in the original deal. The rules must be reasonable, applied equally to all tenants, and made to protect the rental unit, the tenant's well being, or the welfare of other tenants. The tenant should ask for the rules in writing.

CAN THE LANDLORD EVER CHANGE THE LEASE SUCH THAT IT CREATES A SUBSTANTIAL MODIFICATION?

YES. The landlord can change it only if the tenant agrees in writing and the tenant is somehow compensated for the change.

CAN THE LANDLORD REQUIRE NOTICE WHEN THE TENANT LEAVES FOR SEVERAL DAYS?

YES. The landlord can make it part of the lease. If so, the tenant must give notice whenever the tenant leaves for seven days or more.

If the landlord requires notice and the tenant does not give it, the tenant could be charged for any damages caused to the rental unit while the tenant is gone. The tenant could also be found to have abandoned the premises if the absence is excessive.

WHAT COULD HAPPEN AFTER THE WRITTEN LEASE HAS ENDED?

It depends on what the lease says is to happen. But, if the lease does not say, possession could be recovered without demand by action for forcible detainer.

REQUIRING SECURITY DEPOSITS

WHAT SHOULD A TENANT DO IF A SECURITY DEPOSIT IS PAID?

Before taking a security deposit, the landlord must give the tenant a list of damages already in the rental unit and an estimate of the cost of repairing them.

The tenant has a right before moving in to inspect the rental unit and make sure the tenant agrees with the landlord's list of damages. If the tenant and landlord agree on the list, they must both sign it.

WHAT IF THE TENANT DISAGREES WITH THE LANDLORD'S LIST OF DAMAGES?

The tenant should not sign the list. Instead, the tenant should:

1. List in writing items that the tenant disagrees with and sign this statement;
2. Give the list back to the landlord; and
3. Keep a copy of any list signed.

WHAT IF THE LANDLORD DOES NOT GIVE THE TENANT A LIST OF DAMAGES?

In this case, the landlord has no legal right to keep any part of the security deposit. If the tenant still decides to move in, it would be a good idea for the tenant to sign the tenant's own list and give the landlord a copy.

WHAT DOES THE LANDLORD DO WITH THE SECURITY DEPOSIT?

The landlord must place all security deposits in a separate bank account. The landlord must tell the tenant the name of the bank and the number of the account

DOES THE TENANT GET THE SECURITY DEPOSIT BACK WHEN THE TENANT LEAVES?

The landlord must give the tenant a second list of damages caused by the tenant or the tenants family or fiends, when the tenant vacates. The tenant will get back the deposit minus the charges for any damages. The landlord cannot deduct charges for normal wear and tear.

WHAT IF THE TENANT DISAGREES WITH THE LANDLORD'S LIST?

The tenant must list in writing those items with which the tenant disagrees and promptly give a copy of the list to the landlord. The tenant has the right to bring the landlord to court. The court will only look at those items with which the tenant disagrees. The court will order the tenant to pay anything in the landlord's list with which the tenant does not disagree.

WHAT CAN THE LANDLORD DO IF THE TENANT LEAVES WITHOUT PAYING ALL RENT OWED?

After 30 days, unless the tenant demands a return of the deposit the landlord can apply the deposit toward the rent owed.

WHAT CAN THE LANDLORD DO IF THE LANDLORD CANNOT FIND THE TENANT TO RETURN THE SECURITY DEPOSIT?

If the tenant does not owe any rent when the tenant leaves and is due a refund of the security deposit the landlord should send written notice of the amount of the refund to the tenant's last known address. If the tenant does not get in touch with the landlord within 60 days, the landlord can keep the deposit.

ENTERING THE RENTAL UNIT

THE LANDLORD MAY ENTER THE RENTAL UNIT TO:

- ◆ Inspect it.
- ◆ Make repairs.
- ◆ Show it to future tenants.
- ◆ Show it to possible buyers.

NOTE: In case of emergency (fire, broken water pipe, etc.), the landlord can enter without notice. In any case except emergency, the landlord must give the tenant two days written notice of the landlord's desire to visit the rental unit, and can only ask to visit at reasonable times.

CAN THE LANDLORD ENTER THE RENTAL UNIT WHEN THE TENANT IS AWAY?

YES. If the tenant is gone more than seven days, the landlord may enter the rental unit at times reasonably necessary.

WHAT IF THE LANDLORD KEEPS ENTERING THE RENTAL UNIT WITHOUT GOOD CAUSE?

The tenant has a right to take the landlord to court to stop the landlord. The tenant may be able to collect damages and even a fee for the tenant's lawyer.

REPAIRING THE UNIT

CAN THE LANDLORD CHARGE THE TENANT FOR DAMAGES CAUSED BY TENANT OR THE TENANT'S FAMILY OR FRIENDS?

YES. The tenant is responsible for damages caused by the tenant or family or friends. If the damages affect health and safety and they can be fixed by repairing, cleaning, or replacing damaged items to the satisfaction of the landlord, the tenant may do the work.

If the tenant does not make the repairs within 14 days after getting the landlord's notice or as soon as required in an emergency, the landlord can enter the rental unit and have the work done. The landlord can give the tenant a bill for all of the things repaired and add the bill to the next rent payment due.

CAN THE TENANT BE EVICTED FOR REFUSING OR FAILING TO REPAIR DAMAGES CAUSED BY THE TENANT OR THE TENANT'S FAMILY OR FRIENDS?

YES. If the tenant or the tenant's family or friends cause damage and the tenant refuses or fails to repair or pay for the damage, the landlord can end the lease with 14 days written notice.

WHAT CAN THE TENANT DO IF THE RENTAL UNIT NEEDS HEALTH AND SAFETY REPAIRS AND IT IS NOT THE TENANT'S FAULT?

If the tenant or tenant's family or friends did not cause the damage and the damages materially affect health and safety, the tenant can take several actions.

The tenant should first ask the landlord in writing to make the needed repairs within 14 days. If the landlord does not do it, the tenant should report this to the housing maintenance division of the local government. They will tell the landlord to repair the rental unit. The tenant cannot be evicted for complaining to the landlord or to the government.

CAN THE TENANT TAKE THE LANDLORD TO COURT FOR FAILING TO REPAIR HOUSING CODE VIOLATIONS?

MAYBE: The tenant can take the landlord to court to receive money damages for the problem and to have the court order the landlord to repair the rental unit.

CAN THE TENANT END THE LEASE IF THE LANDLORD WILL NOT MAKE REPAIRS FOR HEALTH AND SAFETY?

YES. The tenant should first send the landlord a certified letter, return receipt requested, telling what needs to be repaired. The letter should also say that if the repairs are not made within 14 days, the tenant has a right to end the lease and move out after 30 days.

CAN THE TENANT TAKE THE LANDLORD TO COURT EVEN AFTER THE TENANT MOVES OUT?

YES. Even after the tenant leaves, the tenant can sue the landlord for damages for not providing services.

IF THE TENANT DOES NOT WANT TO MOVE, CAN THE TENANT MAKE HEALTH AND SAFETY REPAIRS?

MAYBE. Another way to solve repair problems the tenant did not cause is for the tenant to make the repairs and take a certain amount of the cost out of the rent, after giving proper written notice. This can only be done in certain circumstances and the tenant should be very careful about this - a tenant could be evicted if it is not done properly.

WHAT IF EMERGENCY REPAIRS ARE NEEDED?

If the tenant is without an important service which the landlord agreed to provide, such as hot and cold running water, electricity, gas, etc., and it is not the tenant's fault, the tenant should give the landlord written notice of the problem as soon as possible. The landlord should fix the problem right away.

NOTE: If the landlord purposely fails to get the needed service, the tenant should see a lawyer because several actions are open.

With proper notice under certain circumstances, the tenant could:

- ◆ Have the services turned on or fixed and take the cost out of the rent.
- ◆ Get the rent reduced to the lower value of the rental unit without the services.

- ◆ Rent another rental unit, without paying rent on the unit without services until they are turned on or fixed.
- ◆ End the lease, with 30 days notice, if the landlord does not turn on or fix the services within 14 days.

WHAT IF THE RENTAL UNIT IS DAMAGED BY A NATURAL DISASTER?

If fire, tornado, flood, explosion, or some other disaster damages the rental unit, the tenant or the landlord can end the lease with 14 days written notice.

If the unit is dangerous, the tenant should leave right away. The landlord must give the tenant the remaining pre-paid rent for the days after the disaster happened.

EVICTING TENANTS FROM THE UNIT

If the tenant does not follow the terms of this law or any other rules agreed to in the lease, the tenant could be evicted. The landlord must use the proper eviction procedure and the tenant cannot be evicted for illegal reasons.

NOTE: There is a difference between the notice of eviction and the act of eviction.

CAN THE LANDLORD LEGALLY EVICT A TENANT WITHOUT A COURT HEARING?

NO. The landlord cannot lock out the tenant, remove property, or cut off the tenant's water, gas, or electricity, without first going through the court eviction procedure and getting a legal order. The tenant cannot legally be forced out unless a court officer comes to the rental unit.

SHOULD THE TENANT GO TO COURT WHEN THE LANDLORD TRIES TO EVICT THE TENANT?

YES! Some landlords will not give the required legal notice or will not give it in the proper manner. The landlord should not be entitled to an eviction judgment under these circumstances, but the tenant must be in court to tell the judge that the tenant did not receive proper notice.

NOTE: Many tenants do not show up in court to demand their legal rights and can be evicted seven days after the trial date. GET A LAWYER and appear in court on the trial date - otherwise you are almost sure to be evicted.

WHAT IS THE REQUIRED NOTICE FOR EVICTION?

The landlord must give a:

- ◆ Seven day written notice of the intention to evict for non-payment of rent.
- ◆ Or Fourteen day written notice of the intention to evict for other noncompliance with the lease.

For non-compliance, the tenant has the right to pay for damages or correct the non-compliance. If the tenant fails to remedy or correct the problem or repeats the non-compliance within six months, the landlord can proceed to evict anyway.

To be effective, the notice to evict must be served by certified mail or hand-delivery by the landlord to an adult member of the household unless the landlord can prove that the tenant received it otherwise.

CAN THE TENANT PAY THE RENT AFTER THE NOTICE AND AVOID BEING EVICTED?

YES. The landlord must send the tenant a letter saying that the lease will end if the rent is not paid within seven days. This notice can lead to eviction, but the landlord must accept the rent if it is offered in full within the seven days.

CAN THE LANDLORD KEEP THE TENANT'S BELONGINGS FOR RENT?

NO. The landlord should not take any of the tenant's belongings, such as a t.v. or furniture, as payment for rent (unless the tenant agrees to this in writing). The landlord can keep the tenant's belongings if the tenant leaves them behind when moving out, and if the tenant has completely abandoned the property. If the tenant comes back seeking to retrieve any property, that means that the tenant has not abandoned it.

CAN THE LANDLORD EVICT THE TENANT FOR ANY REASON?

YES, in some cases. Although the tenant may be performing all of the duties as a tenant, with proper notice the landlord may still make a tenant move:

- ◆ At the end of the term of the lease.
- ◆ After 30 days notice for month-to-month tenants.
- ◆ After seven days notice for roomers and boarders.

DOES IT MAKE A DIFFERENCE IN EVICTION IF THE LANDLORD TAKES THE TENANT'S RENT AFTER GIVING A TERMINATION NOTICE?

It may depend on the cause of eviction. If the landlord accepts rent after a notice of termination was sent based on non-payment, the landlord waives the right to proceed to evict. The court would dismiss the case if the tenant appears at the hearing.

If the landlord accepts rent after sending a notice of termination based on a material violation, such as noise disturbance or damage to the property, the acceptance of rent due may not constitute a waiver and the landlord may be able to proceed to evict the tenant.

WHAT HAPPENS IF THE TENANT STAYS IN THE RENTAL UNIT AFTER THE TENANT HAS BEEN GIVEN NOTICE AND TOLD TO LEAVE?

If the tenant does not leave, the landlord can take the tenant to court to evict the tenant from the property. The landlord can sue for up to three months rent if the tenant stays without good legal reason. If the tenant owes rent, the landlord can also sue for the amount of rent owed.

WHAT IS THE COURT PROCEDURE FOR EVICTION?

The tenant would receive an eviction form called "Forcible Detainer Warrant", served by the constable. The tenant should carefully review the form and SEE A LAWYER.

The service of this notice is different from the notice delivered by the landlord. The constable may serve it by hand-delivery or by mailing a copy and taping a second copy to the door. The trial date will be three or more days later and will be shown on the form.

If the tenant does not show up in court or is found guilty of forcible detainer at the hearing, the sheriff or constable may come to put the tenant out on the street on the eighth day after the court date.

GIVING NOTICE

The landlord must give the tenant the following notices:

- ◆ Two days to enter the rental unit for a good reason, except in the case of emergencies.
- ◆ Seven days to evict the tenant for overdue rent.
- ◆ Fourteen days for the tenant to repair damages caused by the tenant or tenant's family or friends.
- ◆ Fourteen days for causing disturbances or otherwise violating the lease.

The tenant must give the landlord the following written notices:

- ◆ Fourteen days for the landlord to make repairs, before the tenant has it done and takes the cost out of the rent.

The tenant and the landlord must give the following notices to each other:

- ◆ Seven days before leaving when the tenant is a boarder or is renting week-to-week.
- ◆ Thirty days before leaving when renting month-to-month.

- ◆ Fourteen days before leaving if the premises are badly damaged by fire or natural disasters, such as flood or tornado.

GETTING LEGAL ADVICE

Some examples of when you should get legal advice if you are a landlord are when:

- ◆ The tenant is not living up to the tenant's duties.
- ◆ You need help in writing a legal lease.
- ◆ You need help in properly evicting a tenant and are concerned about the legal liability if you proceed improperly.
- ◆ You are just beginning to rent units to tenants.

Some examples of when you should get legal advice if you are a tenant are when:

- ◆ You receive a notice of a court hearing for forcible entry and detainer (for eviction).
- ◆ You do not understand or agree with a written lease.
- ◆ Landlord will not return a security deposit, even though you have not caused any damages.
- ◆ Landlord keeps entering the rental unit at odd hours or without two days notice.
- ◆ Landlord cuts off or threatens to cut off utilities or refuses to make repairs for health and safety.
- ◆ Landlord tries to evict you without giving proper notice. Proper notice is defined on page 1.
- ◆ Landlord tries to evict you after you have reported housing code violations or joined tenants' group.
- ◆ You receive any kind of notice from the landlord.

TAKING RETALIATORY ACTION (Getting Even)

WHAT ARE SOME REASONS WHY THE LANDLORD MIGHT WANT TO GET EVEN WITH THE TENANT?

The tenant:

- ◆ Complains to the local government about conditions in the rental unit.
- ◆ Complains to the landlord about violations of his rights.
- ◆ Joins, organizes, or becomes involved in a tenants' group.

WHAT CAN A TENANT DO IF THE TENANT FEELS THE LANDLORD IS TRYING TO RETALIATE?

- ◆ SEE A LAWYER right away.
- ◆ Sue the landlord for damages and lawyer fees.
- ◆ End the lease, if allowed by the circumstances.
- ◆ Use the Retaliatory Eviction section of URLTA as a defense to stop eviction.

AT WHAT TIMES COULD A TENANT BE MADE TO MOVE EVEN IF THE TENANT CLAIMS THAT THE LANDLORD IS GETTING EVEN?

The tenant could still be evicted if the landlord can prove that the:

- ◆ Rent is overdue.
- ◆ Tenant or tenant's family or friends caused code violations.
- ◆ Rental unit has been ordered to be vacated for repairs.
- ◆ A governmental authority has condemned the rental unit.

WHERE TO GET HELP

CENTRAL KENTUCKY LAWYER REFERRAL SERVICE

P.O. BOX 1466

LEXINGTON, KY 40588-1466

859-225-8644

www.centrankylawyers.com

