



DEFENDING AGAINST EVICTION IN KENTUCKY

● INTRODUCTION

In Kentucky, your rights as a tenant depend upon where you live.

Some cities and counties¹ have the Uniform Residential Landlord and Tenant Act (URLTA), a law which applies to most rental property (hotels, hospitals, group living situations, and employment-based rentals are not covered). URLTA gives tenants and landlords many rights as well as duties.

Most of Kentucky is not covered by URLTA, but *it is true everywhere in the state that:*

K A landlord whose tenants do not move when they are asked to must get a court order before evicting them.

K The law does not give landlords the right, without a court order, to turn off electricity or water in order to get a tenant to move.

K The law does not give landlords the right, without a court order, to lock a tenant out of an apartment, keeping the tenant from their furniture and clothing.

In an URLTA district, if a landlord shuts off utilities or locks the tenant out without a court order, the tenant may sue for damages equal to 3 months' rent plus attorney fees.

What follows is a summary of tenants' rights in URLTA and non-URLTA locations.

● FOR WHAT REASON CAN A LANDLORD REQUIRE A TENANT TO MOVE?

URLTA: Either the lease has expired, or the tenant has "materially breached" the lease. This means the reason cannot be a small or petty one. Non-payment of rent or any part of the rent is a material breach and a good reason for eviction. The #1 rule for tenants: Pay the rent.

NON-URLTA: If there is no lease, the landlord does not need a reason. Where there is

¹ Barbourville, Bellevue, Bromley, Covington, Dayton, Florence, Lexington-Fayette County, Georgetown, Louisville, Ludlow, Melbourne, Newport, Oldham County, Pulaski County, Silver Grove, Southgate, Taylor Mill, and Woodlawn,

a lease, if the landlord wants the tenant out before the lease is up, they must show that the tenant breached (broke) the lease.

- **WHAT KIND OF NOTICE MUST A LANDLORD GIVE A TENANT WHEN THEY WANT THE TENANT TO MOVE OUT (“VACATE”)?**

URLTA: If the reason the landlord says the tenant has to move is because of non-payment of rent, the landlord must give at least 7 days’ notice. For any other reason, they must give 14 days’ notice. The notice must be **in writing**, either hand-delivered or sent by registered/certified mail.

NON-URLTA: The amount of time is whatever the lease requires. However, if the leases has expired, or if there is no lease or lease clause on the subject, the landlord must give the tenant 30 days’ notice **in writing**.

- **WHAT IF THE TENANT HAS NOT MOVED OUT BY THE TIME THE LANDLORD TOLD THEM TO?**

URLTA: If, when the time has run out, the tenant has fixed the problem (paid the overdue rent, or gotten rid of the pet, etc.), then the landlord must allow the tenant to stay. If not, then the landlord can file a court action to get the tenant out.

NON-URLTA: If the landlord has given the right amount of notice and the tenant does not leave, the landlord can then file a court action to get the tenant out.

- **HOW MUCH ADVANCE NOTICE MUST A TENANT GET BEFORE COURT?**

URLTA AND NON-URLTA: The tenant must receive notice **at least three days** before the court date. The notice must be either hand-delivered to a member of the household 16 years old or older, or it must be mailed and posted in plain view at the premises

- **WHAT HAPPENS IN LANDLORD-TENANT COURT?**

Only One Issue

These cases are called “forcible detainer” cases. They are special, shortened court cases that deal only with the issue of who has a right to be on the property, the landlord or the tenant. Regarding money, the court will look at whether (but not how much) the tenant is behind in rent, because that will determine if the tenant has broken the lease. But the court will not decide who owes how much. The only order will be either an eviction of the tenant or a dismissal of the landlord’s case.²

Appearances

² It is rarely used this way, but the Forcible Detainer law also allows a tenant to sue a landlord who has improperly taken possession of the premises. (This is called “Forcible Entry”). In such a case, the court’s options are to either order the landlord off the premises, or dismiss the tenant’s case.

If the tenant does not show up, the judge will grant the landlord the right to have them and their things taken off the premises by the sheriff on the 7th day after the court hearing. If the tenant shows up but the landlord doesn't, the judge will dismiss the case. (The tenant will not be evicted.) If both parties appear, the judge will call the case and expect the parties to state what they think the court should rule and why.

Witnesses

Both parties have a right to bring or subpoena (order the appearance of) witnesses; a subpoena form may be obtained from the court clerk. Extra time will not be given once the case is called, so a tenant must have the subpoena issued ahead of time; the witnesses must be present and ready to testify when the case is called.

Defenses - What can the tenant say in their defense?

NON-URLTA:

3Failure to give required notice. If the tenant can show the court that they did not receive the proper (usually 30-day) *notice to vacate*, or that they did not receive at least 3 days' *notice of the court hearing*, then the judge should dismiss the case, or put the hearing off until the proper notice has been given.

3Acceptance of current rent. For a tenant who is behind in rent, if they can show the court that the landlord, after giving the notice to vacate, let the tenant pay the current month's rent, then the court action will be dismissed, because by taking the current rent the landlord accepted the tenant for a further term. The landlord will have to start over with a new court action at a later time.

URLTA:

A tenant has the above defenses and these others that NON-URLTA tenants don't have:

3Right to "cure". A tenant who has broken the lease can show the court that in the meantime they fixed the problem for which the landlord was trying to evict them (eg., paid the back rent, fixed the hole in the wall, etc.)

3Landlord retaliation. A tenant can prevent an eviction if they can prove to the court that the landlord is only trying to "get back" at the tenant for some action the tenant had a right to take – such as reporting something to the Health Department, joining a tenant union, or withholding rent to pay for repairs.

3Credit for rent withheld. A tenant who has used past rent money to pay for repairs or needed utilities that the landlord refused to make or provide can show the court that they are not behind in rent since they did pay the money. (Tenants who want to withhold their rent to make repairs must follow very exact rules³ for notifying the landlord and spending the money; otherwise this is no defense to eviction.)

³ Among other things, the repair must be necessary for health and safety; the tenant must notify landlord 14 days ahead of time; and the repair cannot exceed ½ the rent (or \$100, whichever is more).

● **CAN A LANDLORD EVICT A TENANT FOR NOT PAYING LATE FEES?**

URLTA AND NON-URLTA: A tenant breaks their lease if they pay their rent late and don't pay a required late fee. However, a late fee must be reasonable, or else it will be considered a "penalty" by the court, and the court may not enforce such a penalty. A "reasonable" late fee is one that fits the amount of trouble late rent causes a landlord – a little extra bookkeeping, a tiny loss of interest. It can be argued that a late fee of more than \$5 or \$10 is not reasonable.

● **CAN TENANTS GET THEIR SECURITY DEPOSIT BACK, EVEN IF THEY HAVE BEEN EVICTED?**

NON-URLTA: If a tenant is evicted without owing the landlord money (or owing the landlord less than the amount of the security deposit), they can file a case in Small Claims

Court to get back the money owed them. They cannot get an order from the Forcible Detainer (eviction) court.

URLTA: If a tenant leaves owing the landlord rent, the landlord can apply the security deposit money to the rent bill after 30 days have passed. If the tenant doesn't owe back rent, or not as much as the amount of the security deposit, the landlord must mail the tenant a notice of the balance of the account and return the money, unless the tenant does not reply within 60 days of the notice.

The tenant can file a small-claims action to get the security deposit back. The judge will decide how much of the security deposit must be paid back. It must all be given back if the landlord did give do certain things (tell the tenant, at move-in, what bank account the money is kept in; and have the tenant sign off on inspection forms showing the condition of the premises before and after the tenancy.)

The information here is general and is not to be taken as legal advice about your particular case.

For legal advice, call your local lawyer referral service or, if you are a low-income person, contact Legal Services. To locate the office serving your area, consult the map at <http://kylawhelp.org/Home/PublicWeb/LegalSvcs/StateMap> or call 859-255-9913.

Persons over the age of 60 and who are Kentucky residents (or their caretakers) may obtain advice and consultation at 1-800-200-3633, the Legal HelpLine for Older Kentuckians.
