

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2006

SENATE BILL No. 380

By Committee on Judiciary

1-18

12 AN ACT concerning the residential landlord and tenant act; amending
13 K.S.A. 58-2548, 58-2550 and 58-2570 and repealing the existing
14 sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 58-2548 is hereby amended to read as follows: 58-
18 2548. (a) Within five (5) days of the initial date of occupancy or upon
19 delivery of possession, the landlord, or such landlord's designated rep-
20 resentative, and the tenant shall jointly inventory the premises. A written
21 record detailing the condition of the premises and any furnishings or
22 appliances provided shall be completed. Duplicate copies of the record
23 shall be signed by the landlord and the tenant as an indication the inven-
24 tory was completed. The tenant shall be given a copy of the inventory.

25 (b) *The landlord shall not be allowed to assert a claim against the*
26 *tenant or the security deposit for damages, as allowed by K.S.A. 58-2550,*
27 *and amendments thereto, unless the landlord or the landlord's designated*
28 *representative completes an initial inventory of the premises with the ten-*
29 *ant within such five days or makes a good faith effort to complete the*
30 *inventory within such five days. ~~If such claim is levied against a tenant~~*
31 *~~or the security deposit without the completion of such inventory, the ten-~~*
32 *~~ant shall recover damages in the amount of two months rent.~~*

33 (c) (1) Within a reasonable time after notification of either party's
34 intention to terminate the tenancy, or before the end of the lease term,
35 the landlord shall notify the tenant in writing of the tenant's option to
36 request ~~an initial~~ **a pre-termination** inspection and of the tenant's right
37 ~~to be present at the inspection. At a reasonable time, no earlier than 14~~
38 **30** days, but no later than seven days, before the termination or the end
39 of lease date, the landlord, or the landlord's designated representative,
40 upon the request of the tenant, shall make ~~an initial~~ **a pre-termination**
41 inspection of the premises prior to any final inspection the landlord makes
42 after the tenant has vacated the premises. The landlord shall give at least
43 48 hours prior written notice of the date and time of the inspection if a

1 ~~mutual time is agreed upon, or if a~~ mutually agreed time cannot be sched-
2 uled but the tenant still requests an inspection. The landlord shall proceed
3 with the inspection at such date and time whether the tenant is present
4 or not, unless the tenant previously withdrew the request for the inspec-
5 tion. The purpose of the ~~initial~~ **pre-termination** inspection shall be to
6 allow the tenant an opportunity to remedy identified **cleaning** deficien-
7 cies, ~~in a manner consistent with the right and obligations of the parties~~
8 ~~under the rental agreement,~~ **necessary to return the unit to the same**
9 **level of cleanliness it was in at the initial date of occupancy or upon**
10 **delivery of possession** in order to avoid damages being deducted from
11 the security deposit.

12 (2) If a tenant does not request ~~an initial~~ **a pre-termination** inspec-
13 tion, **the rental agreement is terminated for material noncompliance**
14 **pursuant to K.S.A. 58-2564, and amendments thereto, or the tenant**
15 **abandons the dwelling unit pursuant to K.S.A. 58-2565, and amend-**
16 **ments thereto,** the duties of the landlord under this subsection are
17 discharged.

18 (3) Based on the ~~initial~~ **pre-termination** inspection, the landlord
19 shall give the tenant an itemized statement identifying deficiencies; **and**
20 specifically any ~~repairs or cleaning;~~ that ~~are proposed to be the basis of~~
21 ~~any being~~ **may result in money being** deducted from the security deposit
22 that the landlord intends to make pursuant to K.S.A. 58-2550, and amend-
23 ments thereto. If the tenant is not present at the ~~initial~~ **pre-termination**
24 inspection and the inspection is completed pursuant to paragraph (1), the
25 itemized statement shall be left inside the premises.

26 (4) The tenant shall have the opportunity during the period following
27 the initial inspection until termination of the tenancy to remedy identified
28 **cleaning** deficiencies, ~~in a manner consistent with the rights and obli-~~
29 ~~gations of the parties under the rental agreement,~~ **necessary to return**
30 **the unit to the same level of cleanliness it was in at the initial date**
31 **of occupancy or upon delivery of possession** in order to avoid damages
32 being deducted from the security deposit.

33 (d) At the termination of the tenancy, the landlord shall act in a man-
34 ner as described in K.S.A. 58-2550, and amendments thereto, concerning
35 the return of the security deposit.

36 Sec. 2. K.S.A. 58-2550 is hereby amended to read as follows: 58-
37 2550. (a) A landlord may not demand or receive a security deposit for an
38 unfurnished dwelling unit in an amount or value in excess of one month's
39 periodic rent. If the rental agreement provides for the tenant to use fur-
40 niture owned by the landlord, the landlord may demand and receive a
41 security deposit not to exceed 1½ months' rent, and if the rental agree-
42 ment permits the tenant to keep or maintain pets in the dwelling unit,
43 the landlord may demand and receive an additional security deposit not

1 to exceed ½ of one month's rent. A municipal housing authority created
 2 under the provisions of K.S.A. 17-2337 et seq., and amendments thereto,
 3 which is wholly or partially subsidized by aid from the federal govern-
 4 ment, pursuant to a rental agreement in which rent is determined solely
 5 by the personal income of the tenant, may demand and receive a security
 6 deposit in accordance with a schedule established by the housing au-
 7 thority, which is based on the bedroom unit size of the dwelling unit. Any
 8 such municipal housing authority which establishes such a schedule shall
 9 provide a deferred payment plan whereby the tenant may pay the deposit
 10 in reasonable increments over a period of time.

11 ~~(b) Whenever money is deposited or advanced by a tenant on a rental~~
 12 ~~agreement as security for performance of the rental agreement, the land-~~
 13 ~~lord shall not earn interest on a deposit without the earnings benefiting~~
 14 ~~the tenant.~~

15 ~~—(e) [(b)]~~ Upon termination of the tenancy, any security deposit held
 16 by the landlord may be applied to the payment of accrued rent and the
 17 amount of damages which the landlord has suffered by reason of the
 18 tenant's noncompliance with K.S.A. 58-2555, and amendments thereto,
 19 and the rental agreement, all as itemized by the landlord in a written
 20 notice delivered to the tenant. ~~used for any purpose, including, but not~~
 21 ~~limited to, any of the following:~~

22 ~~—(1) The compensation of a landlord for a tenant's default in the pay-~~
 23 ~~ment of rent.~~

24 ~~—(2) The actual cost of repairs for damages to the premises, exclusive~~
 25 ~~of ordinary wear and tear, which the landlord suffered by reason of the~~
 26 ~~tenant's noncompliance with K.S.A. 58-2555, and amendments thereto,~~
 27 ~~and the rental agreement.~~

28 ~~—(3) The cleaning of the premises upon termination of the tenancy nec-~~
 29 ~~essary to return the unit to the same level of cleanliness it was in at the~~
 30 ~~initial date of occupancy or upon delivery of possession. applied to the~~
 31 ~~payment of accrued rent, damages the landlord has suffered by rea-~~
 32 ~~son of the tenant's noncompliance with K.S.A. 58-2555, and amend-~~
 33 ~~ments thereto, and damages the landlord has suffered by reason of~~
 34 ~~the tenant's noncompliance with the rental agreement, all as item-~~
 35 ~~ized by the landlord in a written notice delivered to the tenant.~~

36 ~~(#) [c]~~ If the landlord proposes to retain any portion of the security
 37 deposit for expenses, damages or other legally allowable charges under
 38 the provisions of the rental agreement, other than rent, the landlord shall
 39 return the balance of the security deposit to the tenant within ~~14 days~~
 40 ~~after the determination of the amount of such expenses, damages or other~~
 41 ~~charges, but in no event to exceed 30 21 30 days after termination of the~~
 42 ~~tenancy, delivery of possession and demand by the tenant. If the tenant~~
 43 ~~does not make such demand within 30 21 30 days after termination of~~

1 the tenancy, the landlord shall mail that portion of the security deposit
 2 due the tenant to the tenant's last known address. *Accompanying the*
 3 *balance of the security deposit, the landlord shall submit an itemized state-*
 4 *ment that lists the amounts of any deductions from the security deposit*
 5 *and the reasons for the deductions. If the deductions are in an amount*
 6 *greater than five percent of the security deposit, invoices which document*
 7 *the actual cost **or actual estimates and quotes** of material, supplies and*
 8 *labor shall be provided to the tenant. In no case shall a landlord withhold*
 9 *any amount from the security deposit:*

10 (1) *Above the amount of actual damages suffered by the landlord; or*
 11 (2) *based off a predetermined list of costs for materials, supplies or*
 12 *labor.*

13 ~~(c)~~ ~~(e)~~ [(d)] If the landlord fails to comply with subsection ~~(b)~~ of this
 14 section ~~(c)~~ or (d), the tenant ~~may~~ shall recover that portion of the security
 15 deposit due together with damages in an amount equal to ~~1 1/2 the amount~~
 16 ~~wrongfully withheld~~ two months rent.

17 ~~(d)~~ ~~(f)~~ [(e)] Except as otherwise provided by the rental agreement, a
 18 tenant shall not apply or deduct any portion of the security deposit from
 19 the last month's rent or use or apply such tenant's security deposit at any
 20 time in lieu of payment of rent. If a tenant fails to comply with this
 21 subsection, the security deposit shall be forfeited and the landlord may
 22 recover the rent due as if the deposit had not been applied or deducted
 23 from the rent due.

24 ~~(e)~~ ~~(g)~~ [(f)] Nothing in this section shall preclude the landlord or
 25 tenant from recovering other damages to which such landlord or tenant
 26 may be entitled under this act.

27 ~~(f)~~ ~~(h)~~ [(g)] The holder of the landlord's interest in the premises at
 28 the time of the termination of the tenancy shall be bound by this section.

29 Sec. 3. K.S.A. 58-2570 is hereby amended to read as follows: 58-
 30 2570. (a) The landlord or the tenant may terminate a week-to-week ten-
 31 ancy by a written notice given to the other at least seven days prior to the
 32 termination date specified in the notice.

33 (b) The landlord or the tenant may terminate a month-to-month ten-
 34 ancy by a written notice given to the other party stating that the tenancy
 35 shall terminate upon a periodic rent-paying date not less than 30 days
 36 after the receipt of the notice, except that not more than 15 days' written
 37 notice by a tenant shall be necessary to terminate any such tenancy where
 38 the tenant is in the military service of the United States and termination
 39 of the tenancy is necessitated by military orders. Any rental agreement
 40 for a definite term of more than 30 days shall not be construed as a month-
 41 to-month tenancy, even though the rent is reserved payable at intervals
 42 of 30 days.

43 (c) If the tenant remains in possession without the landlord's consent

1 after expiration of the term of the rental agreement or its termination,
2 the landlord may bring an action for possession. In addition, if the tenant's
3 holdover is willful and not in good faith the landlord may recover an
4 amount not more than 1½ months' periodic rent or not more than 1½
5 times the actual damages sustained by the landlord, whichever is greater.
6 If the landlord consents to the tenant's continued occupancy subsection
7 (d) of K.S.A. 58-2545, and amendments thereto, shall govern.

8 (d) In any action for possession, the landlord may obtain an order of
9 the court granting immediate possession of the dwelling unit to the land-
10 lord by filing a motion therefor in accordance with subsection (b) of
11 K.S.A. 60-207, and amendments thereto, and service thereof on the ten-
12 ant pursuant to K.S.A. 60-205, and amendments thereto. After a hearing
13 and presentation of evidence on the motion, and if the judge is satisfied
14 that granting immediate possession of the dwelling unit to the landlord
15 is in the interest of justice and will properly protect the interests of all
16 the parties, the judge may enter or cause to be entered an order for the
17 immediate restitution of the premises to the landlord upon the landlord
18 giving an undertaking to the tenant in an amount and with such surety as
19 the court may require, conditioned for the payment of damages or oth-
20 erwise if judgment be entered in favor of the tenant.

21 (e) *If a lease contains an automatic renewal clause or a provision for*
22 *the automatic extension of the rental agreement:*

23 (1) *The date such clause or provision takes effect shall not be more*
24 *than 90 days before the termination date specified in the rental agreement.*

25 (2) *Such clause or provision is not enforceable against the tenant un-*
26 *less the landlord, at least 30 days but not more than 60 days prior to the*
27 *specified date for the giving of such notice to the landlord, gives to the*
28 *tenant written notice, calling to the attention of the tenant the existence*
29 *of such clause or provision in the rental agreement.*

30 (3) *Such clause or provision shall be on a separate page of the rental*
31 *agreement and require that the tenant sign such page indicating the tenant*
32 *has read and understands the clause or provision before signing the rental*
33 *agreement.*

34 (f) If a landlord provides to a tenant a document which, if signed by
35 the landlord or tenant or both, would constitute the tenant's written no-
36 tice to the landlord that the tenant intends to vacate the premises, and if
37 such document contains any additional terms that are not contained in
38 the rental agreement between the landlord and tenant, then the docu-
39 ment shall include the following statement in no less than ten-point bold-
40 face type: YOUR SIGNATURE ON THIS DOCUMENT MAY BIND
41 YOU TO ADDITIONAL TERMS NOT IN YOUR ORIGINAL LEASE
42 AGREEMENT. IF YOUR LEASE REQUIRES YOU TO GIVE WRIT-
43 TEN NOTICE OF YOUR INTENT TO VACATE, YOU HAVE THE

1 RIGHT TO DECLINE TO SIGN THIS DOCUMENT AND TO PRO-
2 VIDE WRITTEN NOTICE IN ANOTHER FORM.’ If such statement
3 does not appear in such document, a tenant’s signature on such document
4 shall not bind the tenant to any additional terms that are not contained
5 in the rental agreement.

6 Sec. 4. K.S.A. 58-2548, 58-2550 and 58-2570 are hereby repealed.

7 Sec. 5. This act shall take effect and be in force from and after its
8 publication in the statute book.