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Late Rent and Eviction – Education/Options

Due to the impact of COVID-19, many people will be or have been affected by reduced work hours or job loss. At HCCI, we are working diligently to assist tenants and landlords in this time of national crisis, specifically regarding LATE RENT & EVICTION.

Governor's Kelly's temporary halt to eviction and mortgage foreclosure for those living in market rate housing ended May 31, 2020. Therefore, tenants residing in the majority of market rate housing, who are in default of rent, can now be legally evicted.

The CARES Act continues to provide a moratorium on eviction proceedings for tenants who reside in "covered housing" until July 24, 2020. See HCCI CARES Act document for information.

Because all eviction protections have or will expire in the near future, HCCI offers the following education and options –

- If rent will be late, contact the landlord immediately to explain the situation.
- Remember, this national emergency is not only happening to the tenant, but to the landlord as well.
 - Both parties should try to work together.
 - Being a landlord is a job and how a landlord's income is acquired.
 - Many landlords depend on rent payments to pay the mortgage for the tenant's rental.
- HCCI encourages landlords to negotiate payment plans (in writing) or other agreements to allow renters to address any late or non-payments, or late fees.
 - Ask the landlord for a rent payment plan which should outline a weekly, bi-monthly or monthly payment in order to get caught up.
 - The landlord does not have to accept a payment plan, a repayment schedule or amount a tenant suggests, but if accepted, it should be in writing.
 - Tenants should only offer to make arrangements to pay what they can actually afford. Ex: If a tenant can only afford to repay \$75.00 every two weeks then don't agree to paying \$100.00.
 - Both parties must agree on the amount paid, and should sign the pay agreement, each party receiving a copy.
 - Tenants can offer to work for the landlord as repayment.
 - Example – ask to mow lawns or conduct other yard work at the landlord's vacant or occupied rentals. Offer to clean a vacant rental(s). Any agreement should be in writing.
 - Always obtain a receipt for any rent paid.
 - Ask the landlord if late rent fees can be excused because of this unusual pandemic. If the landlord agrees, get the agreement in writing.

- Late fees can only be enforced if outlined in a rental agreement.
- Tenants owing rent have the following options to seek rent assistance –
 - Contact social service agencies or churches in the area;
 - A city/county may have a list of resources for rent and other aid. HCCI has resource lists for the cities of Emporia, Lawrence, Manhattan and Topeka, if needed.
 - Important - any additional income, for example, a government stimulus check IRS tax refund or unemployment income could be set aside in a checking or savings account for rent or sent directly to the landlord to cover rent payments (obtain a receipt).
 - In other words, don't make a big purchase with that money.
 - Prioritize spending.
 - Housing, food, utilities, prescription medication are all necessities.
 - In this time of national crisis, other bills like credit cards and cable/satellite television can wait. Call HCCI's HUD Certified Financial Counselors with help on budgeting and other financial issues – FREE counseling by appt. – 800-383-0217.
 - Borrow money from family or friends.
 - Sell personal items using social media marketing (but be safe).
 - Donate plasma for cash - Guidance released by the U.S. Department of Homeland Security on March 19, 2020 - Plasma donors save lives by donating at plasma centers that collect blood plasma used to manufacture lifesaving pharmaceuticals. Therefore, these centers are within the category of essential, critical infrastructure (health care and pharmaceutical supply) that is exempted from general lockdown or closure directives.
- Remember - a tenant can face legal eviction if rent is not paid in full.

*It should be noted that while courts have recently opened, they are behind in setting eviction hearings. Therefore, even though tenants are in threat of being evicted, it may take quite a while for the action to take place.

- Eviction Procedure – The following is not legal advice – HCCI does not provide legal advice – Courts and judges in various locations in Kansas sometimes differ in rendering decisions. Information below is based on statutes found in the Kansas Residential Landlord and Tenant Act (KIRLTA) and common court procedures.
 - Kansas law, KSA 58-2564 (b) informs that the landlord may terminate the rental agreement when...
 - Rent is unpaid when due and... the tenant fails to pay rent within 72 hours (3 days, not business days) after written notice by the landlord of nonpayment (5 days if mailed).
- OR
- The tenant has the right to vacate within 72 hours of receiving the 3 day pay/vacate notice (remove all belongings, clean and return all keys). If the tenant vacates/returns possession, the lease terminates and the tenant “may” be able to avoid legal eviction. HCCI can never say what a judge might decide.

- A 3-day/72-hour notice must contain the following information:
 - It must be in writing.
 - Date and time the notice is delivered should be notated.
 - Inform the tenant payment must be received in 3 days (72 hours from the date/time served).
 - State the amount owed.
 - Note intention to terminate the rental agreement by way of legal eviction if the rent is not paid within such 3-day period.
 - Must give 2 additional days if the notice is mailed.
- If the tenant attempts to pay the full amount owed within 3 days/72 hours, the landlord must accept it and tenancy continues.
- If the tenant pays within the 3-day period, but not the full amount – if a landlord accepts the money, the landlord might provide a receipt stating
 - accepting late rent, but reserving right to evict because rent was not paid in full within the 3-day period per statute 58-2564(b) & 58-2566. If the landlord provides such a receipt this indicates the landlord may decide to proceed with legal eviction. HCCI cannot say what might happen in such a scenario. Though many courts render evictions in such situations.
- If the tenant pays after the 3-day period ends, either part of the rent money or in full, if a landlord accepts the money, the landlord might provide a receipt stating....
 - accepting late rent, but reserving right to evict because rent was not paid within the 3-day period per statute 58-2564(b) and 58-2566. If the landlord provides such a receipt this indicates the landlord may decide to proceed with legal eviction. HCCI cannot say what might happen in such a scenario. Though many courts render evictions in such situations.

*Note – if the landlord cashes a check or money order for any rent paid in the above two scenarios and then files for eviction – the judge may decide against granting the eviction. Therefore, many landlords simply hold on to the money until the judge grants the eviction and allows the landlord to keep the rent.

- Once the eviction suit is filed, the attorney or the landlord representing himself pro se will be provided a date and time for the docket call of the court (court hearing).
- The tenant will be served notice to appear in court
- The tenant should show up at the hearing even if an eviction is likely going to occur.
 - Otherwise the tenant won't know what to expect and when to vacate, if evicted.
- The initial date is a hearing. The tenant will be asked to sign a form indicating whether there is agreement that rent is owed. The tenant has 3 options, agree, disagree or no contest.
- If the tenant agrees, the eviction can be granted on that date.
- If the tenant disagrees, a trial date will be set.
- At trial the landlord and the tenant will present any evidence.
- A judge will listen to both sides and make a ruling in accordance with the law.
- Tenants often use a lack of maintenance as the reason for not paying rent. HCCI informs tenants – never withhold rent due to a lack of maintenance as the eviction will typically still be granted.

- There are other options regarding a lack of maintenance – call HCCI's Tenant/Landlord Program for education/options.
- If the eviction is granted, the tenant will be informed by the court of when they must vacate and remove all their personal property. It is vital to vacate and remove property on said date. Otherwise, the sheriff's department or other designated party will arrive and only give a few minutes to allow the tenant to gather belongings. The remaining household items will be locked inside. Call HCCI for questions on abandonment of items.
- Unlawful Eviction – the following actions committed by a landlord are illegal. Tenants encountering such issues can call HCCI for immediate assistance.
 - Lock-outs
 - Removal / holding of personal property
 - Interference with services – shutting off utilities
 - Interference with access – blocking the tenant from entering
 - Threats, intimidation, physical force

***Important – There are significant specifics regarding individual tenant questions. Each late rent issue can be unique. Therefore, tenants, tenant/advocates or landlords/property managers should contact HCCI for FREE telephone counseling regarding late rent, eviction or other rental related issues @ 800-383-0217. The caller's name and phone number will be placed on a call log and will be contacted in the order of the call. HCCI employs a counselor who is English/Spanish bilingual.**

*For consumers experiencing other financial issues such as - late bills, dealing with bill collectors, negative credit, student loan questions or behind on mortgage payments - contact HCCI's HUD Certified Financial Counselors @ 800-383-0217 to set up an appointment.

Housing and Credit Counseling, Inc. (HCCI) counselors are not attorneys. HCCI counselors do not provide legal advice. HCCI counselors have received extensive training and receive continuing education.

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