

Unlawful Leases Plague Jefferson County, Kentucky

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Shelter is one of humanity's most basic needs for survival. In Jefferson County (the County) Kentucky, renters comprise 30-35% of the metro population. The County's homelessness for 2025 is .23%. Although the practice of landlord/tenant law is a narrow pocket, it has enormous impact on the lives of the people who engage it, landlords and tenants alike.

When a landlord seeks to regain possession of the property he has rented, he comes to the Forcible Detainer Court, commonly known as Eviction Court, for authority to set the tenant out. See Kentucky Revised Statutes 383. Landlords may only represent themselves if the property is in their own private name. Otherwise, they are required to hire an attorney, or face allegations of the unauthorized practice of law. *Phillips v. M & M Corbin Properties, LLC*, 593 S.W.3d 525, 531-32 (Ky. Ct. App. 2020). In 2025, approximately 15,000 eviction cases were filed in the County. Eviction court has multiple dockets every day of the week. Participants attend via zoom or in person.

The majority of cases that come before the court are based on the tenant's failure to pay rent. There are fewer cases where the landlord does not wish to continue the tenancy after the lease ends or where other lease violations, such as an alleged unauthorized animal or disturbing other residents.

A small bar of landlord/plaintiff attorneys mainly practice eviction filings and rent/debt collection. Many eviction matters are handled for a flat fee. With rare exceptions, the same firms typically represent the majority of landlords in eviction court. Attorneys who provide these services are entitled to collect a fee; the question discussed in this article is whether landlords lawfully can pass that fee on to tenants by enforcing an attorney's fee clause in the lease. The short answer is no.

Most tenants in eviction court cannot afford an attorney. Legal Aid Society (LAS) represents tenants facing eviction as one of its priorities to ensure stable housing for those in poverty. www.yourlegalaid.org.

The number of attorneys in the Housing Unit varies based on funding. LAS receives federal funding, other grants and private donations. All clients of LAS must qualify based on income or qualify under a specific grant. Currently, there are four full-time attorneys in the unit. In addition, Legal Aid trains and supports 45+ pro bono attorneys who represent tenants with the Volunteer Eviction Defense Program. *Volunteer Eviction Defense Program Resources — Legal Aid Society*.

Even with full-time staff and pro bono help, most tenants in eviction court do not have an attorney. In 2025, LAS and its Volunteer Eviction Defense program volunteers represented 1,139 clients in eviction-related cases out of the total 15,000+ evictions filed (< 8%).

No eligible client is charged attorney fees at LAS. When LAS succeeds and a case is dismissed there is no one else to hold landlords accountable to remove the attorney fees and court costs imposed on the tenant's ledger.

In the County, the Uniform Residential Landlord Tenant Act (URLTA) is the law governing the relationship between landlords and tenants. See KRS 383. That statute has been the law for half a century since its adoption in 1974.

URLTA governs the Forcible Detainer process and other aspects of the landlord/tenant relationship, including maintenance duties, notice requirements, access, handling of security deposits and lease agreement terms.

URLTA states:

383.570 Prohibited provisions. (1) A rental agreement may not provide that the

tenant: (a) Agrees to waive or forego rights or remedies under KRS 383.505 to 383.715; (b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; (c) Agrees to pay the landlord's attorney's fees; or (d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith. **(2) A provision prohibited by subsection (1) included in rental agreement is unenforceable.**

Despite the fact the law explicitly states a rental agreement may not provide that the tenant agrees to pay the landlord's attorney fees, the majority of leases disregard this law and include the prohibited provision. Many of these leases are form leases.

Legal Aid has represented many clients where the form lease includes an attorney fees clause. LAS has documented over 50 form leases which include a prohibited attorney fees clause. The provision is rarely challenged because many tenants are not aware of their rights under URLTA, including when attorney fees may be requested or awarded by a court.

Many of the leases also violate URLTA in other ways including waivers of (1) legally required notice and service, (2) jury/bench trial rights, (3) access privacy rights and (4) legally required landlord maintenance responsibilities.

While an attorney certainly can charge a landlord a fee, a landlord cannot shift the fee and court costs to the tenant based on prohibited lease language.

The general rule concerning payment of attorney fees, is that each party is responsible for their own attorney fees absent a statute or enforceable contract. *Batson v. Clark*, 980 S.W.2d 566 (Ky. App. 1998); "The American Rule." For the history of this rule, including minor departures, see *Aleska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247-57 (1975).

Generally, the same is true of court costs unless there is a statutory fee-shifting mechanism and necessary documentation describing the costs are provided to the court before ordered for the prevailing party. See KRS 453.040 and CR 54.04.

Exceptions include instances where attorneys act in bad faith or disobey a direct order of the court. URLTA specifies particular instances when attorney fees are recoverable and the proof required to recover them.

In the County you will observe evidence is limited to the right to possession. Arguments are rarely made by landlords to justify payment of their attorney fees by tenants. In addition, the attorney's fee must be reasonable. SCR 3.130 (1.5); See American Bar Association Rule 1.5. See Attorney's Fees Chart provided here.

Despite KRS 383.570's prohibition of attorney fee-shifting, attorney fees are being paid by tenants in the County regularly. The most common circumstances are: (1) prior to an eviction case ever being filed and based on a notice to the tenant to pay or face an eviction complaint being filed; (2) in eviction court in Jeff Cty, attorney fees are agreed to and paid under the standard agreement to avoid an eviction; and (3) later in collections court as part of a rental debt suit.

Prior to the Eviction. The landlord is required to give a 7-day notice and a right to cure the non-payment before filing the complaint. See KRS 383.660.

Many of the landlord notices include charges for attorney fees and court costs before the Forcible Detainer Complaint is filed with the court. Legal Aid Society has successfully argued on many occasions that the inclusion of attorney fees in a landlord notice letter is improper and

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that when it is included, it renders the notice improper, which should result in a dismissal. The notice letter to the tenant with the right to cure the lease violation is a pre-requisite to the filing of an eviction complaint. The majority of LAS eviction cases are dismissed due to improper notice. LAS has acted to prevent evictions from proceeding where the notice letter includes a demand for attorney fees in violation of KRS 383.570 (1).

In 2025, LAS attorneys filed five motions to dismiss cases due to landlord/property managers demanding attorney fees within the non-payment notice, resulting in favorable settlement terms for our clients. Unfortunately, in many cases, even after dismissal, attorney fees and costs remain on the tenant's ledger, despite the fact the tenant was the prevailing party and the case was dismissed.

The Standard Agreement. One of the ways the court seeks to resolve cases while avoiding a judgment is to give the tenant one week to either pay in full all that is due and owing or to vacate the premises and return keys before the one-week review date.

LAS has found that landlords include court costs and attorney fees in these totals. A large majority of cases are resolved in the County under the standard agreement. The agreement is between landlord and tenant and no one else reviews (1) the amount due, (2) whether attorney fees were included or whether they are reasonable, (3) whether the landlord includes their court costs or other administrative fees. LAS has viewed ledgers charging \$200 to \$800 in attorney fees/eviction fees/court costs per case. In some cases it is more than a single month's rent.

Technically, when the standard agreement is followed, the case is dismissed, making the tenant the prevailing party. However, the tenant "agreed" to pay the attorney fees to get to that dismissal, in direct contradiction to the underlying policy and spirit of KRS 383.570 (1). This is also part of the cyclical misuse of eviction court as a "collections" court rather than as intended, for repossession of the property. LAS finds that attorney fees were paid in eviction court several times before the tenant sought representation.

Rental Debt Collection Cases. In rental debt collection matters, most tenants go unrepresented because they cannot afford an attorney. LAS and private attorney help is limited, with only 10% of the Kentucky bar taking cases pro bono and funding cuts threatening LAS budgets.

Courts should require landlords prove their right to collect attorney fees by specific motion and with knowledge there are specific statutory requirements to the collection of attorney fees in eviction-related matters. The Kentucky of Appeals has held,

"mere failure to pay rent, accompanied by requests for more time or promises to pay, did not rise to the level of "willful" as defined by the statute." *Batson v. Clark*, 980 S.W. 2d 566 (Ky. App. 1998).

Time spent by an attorney on behalf of a landlord on eviction is related to the possession matter and should not be included in an award on the collections suit unless the landlord proves entitlement to such fee, under the statute and case law. It should never be awarded based on a prohibited clause in the lease.

LAS does not attorney fee awards are never merited in an eviction-related matter. However, the blanket demand based on a prohibited lease provision should be denied. LAS is working hard to raise awareness of the prohibition of attorney fee-shifting in leases.

LAS has filed two Declaratory Judgment actions in Circuit Court to request the Court find leases which violate URLTA be declared unconscionable due to their terms being unenforceable. The legal community should raise awareness of URLTA protections for tenant leases in the County and protect tenants and landlords at the start of the contractual relationship, not merely the end. Landlords should review their company leases and remove prohibited provisions, so they are not misleading tenants and violating tenants' rights. Landlord attorneys should review their client's leases for legality and to protect their clients from potential litigation. Tenants should share this information with other tenants.

Rebekah Cotton graduated from the University of Louisville Brandeis School of Law in 2010. She started her career as an advocate for persons with disabilities at the Kentucky Protection and Advocacy agency. After seven years, she moved to Virginia and worked as a prosecutor. She returned to Kentucky after the pandemic to work at the Legal Aid Society in the housing stability unit in May 2021 and currently leads the Volunteer Eviction Defense Program which supports volunteer attorneys, law students, interns and paralegals doing pro bono eviction defense cases for tenants who cannot afford an attorney. ■



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