

**355.2A-528 Lessor's damages for nonacceptance, failure to pay repudiation, or other default.**

- (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (KRS 355.2A-504) or otherwise determined pursuant to agreement of the parties (KRS 355.1-302 and 355.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under KRS 355.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in KRS 355.2A-523(1) or 355.2A-523(3)(a), or, if agreed, for other default by the lessee:
  - (a) Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor;
  - (b) The present value as of the date determined under clause (a) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and
  - (c) Any incidental damages allowed under KRS 355.2A-530, less expenses saved in consequence of the lessee's default.
- (2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under KRS 355.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 242, sec. 32, effective July 12, 2006. -- Amended 1992 Ky. Acts ch. 116, sec. 21, effective January 1, 1993 -- Created 1990 Ky. Acts ch. 363, sec. 75, effective January 1, 1991.