

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: 9/14/18

**MEMORANDUM**

TO:

FROM:

RE: Tenant and Landlord Rights and Responsibilities

Rental Laws & Regulations

This document provides information about rights and responsibilities for tenants and landlords in the City of Madison. The numbers in the text refer to statutes, regulations or ordinances that are the source of the information and are listed below. This is not legal advice. Citations are for guidance and may not apply to your situation. If you have a specific legal question, you should consult an attorney or one of the groups or agencies listed.

- ✓ Wisconsin Statutes, (Wis. Stats.) Chapters 704 (Tenant/Landlord), 710.15 (Mobile Homes), and 799 (Small Claims).
- ✓ Department of Agriculture, Trade and Consumer Protection Regulations (ATCP), Chapter 134 (Residential Rental) and 125 (Mobile Homes).
- ✓ Madison General Ordinances (MGO), Chapter 32 (Tenant/Landlord); Chapter 39 (Fair Housing) (Note: Madison's Ordinances may not fully reflect recent changes in Wisconsin Statutes).
- ✓ Dane County Ordinances (DCO) Chapter 31 (Housing Discrimination).

General Tips for Avoiding Rental Problems

- ✓ Keep a rental file which includes the lease, addendums, check-in/out forms, copies of letters/emails/text to and from your landlord, housing inspection reports, notices to enter, and any documentation you have of repairs or security deposit problems.
- ✓ Take pictures of the dwelling upon check-in/out, and of any other maintenance issues that may arise.
- ✓ Request and keep a receipt for rent payments or pay by check.
- ✓ Keep notes/phone log with dates and names of any contacts with the landlord regarding problems.
- ✓ Get or put promises from the landlord in writing.
- ✓ Contact your landlord when a problem arises, and keep in general good communication with the landlord as well as maintaining a positive relationship.
- ✓ Consider renter's insurance.

### Tenant Responsibilities

- ✓ Be aware of the terms of the lease and follow those terms.
- ✓ Pay rent on time.
- ✓ Keep the apartment in a clean, proper, and sanitary condition.
- ✓ Notify the landlord as soon as possible when a repair is needed.
- ✓ Repair or pay for the repair of damages caused by negligence or improper use.

### Application Process & Discrimination

- ✓ Previously, if the landlord denied an application, they were required to give the tenant written reasons for the denial by the end of the third day after the denial, unless the tenant indicated on the application that they did not wish to receive a written application. See MGO 32.08(5). However, new Wisconsin law has changed this process, and preempts MGO 32.08(5) from taking effect. Landlords no longer need to tell applicants why they were denied housing. Wis. Stat. §66.0104(2)(d)1.; 2013 Wis. Act 76, Sec. 2. In addition, landlords no longer need to tell tenants why their leases were non-renewed. Wis. Stat. §66.0104(2)(d)1. (renders MGO 32.08(5) ineffective).
- ✓ A landlord may not deny you housing because of your sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, familial status, student status, inclusion in a domestic partnership, receipt of rental assistance, homelessness or unemployment status, status as a victim of domestic violence, sexual assault or stalking, genetic identity, or citizenship. A landlord, however, may obtain and use information regarding income, occupation, rental history, credit information, publicly available court and arrest records, or social security numbers in making rental decisions. MGO 39.03(4), Wis. Stats. 66.0104, 106.50(1).
- ✓ You cannot be denied housing solely because you have applied for or currently receive Section 8, and your lease cannot be terminated early solely because you start receiving Section 8 assistance in the middle of your tenancy. However, a Landlord may use information about income in making rental decisions such as denying housing. MGO 32.12(14), (15) & 39.03(4), Wis. Stats. 66.0104.
- ✓ If you pay an application fee (deposit, or earnest money) and your application is rejected or you withdraw the application before approval, the landlord must return the money at the end of the next business day. The landlord cannot hold your earnest money for more than three business days unless you agree in writing to a longer time period not to exceed 21 days. If the application is approved, the money should be returned or applied to rent or the security deposit. If your application is approved but you do not move in, then the landlord may keep part of the fee to pay for actual costs incurred; however, the landlord must mitigate their costs. ATCP 134.05, MGO 32.10.

### Required Landlord Disclosures

- ✓ A landlord must disclose the name, address and phone number of the person authorized to manage, collect rent and maintain the premises, and someone in Wisconsin authorized to accept in person (not a post office box) legal papers and notices in writing on the lease unless the landlord lives in the building and it is four units or less. MGO 32.08(1), ATCP 134.04(1).
- ✓ The landlord must notify you within 10 business days if there is a change in the owner or other person authorized to accept legal notices, the name of the person who collects rent, manages or maintains the premises. MGO 32.08(1), ATCP 134.04(1).
- ✓ Before entering into a rental agreement with a prospective tenant, the landlord shall disclose any building code or housing code violation when all of the following apply: the landlord has actual knowledge of the violation; the violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises; the violation presents a significant threat to the prospective tenant's health or safety; and the violation has not been corrected. Wis. Stat. §704.07(2)(bm). The same applies before the landlord can accept any earnest money or security deposit from a prospective tenant.
- ✓ The landlord must disclose which utilities the tenant is responsible for. If the utilities are not separately metered, the landlord must disclose how it is determined how much each tenant pays for utilities. ATCP 134.04(3), MGO 32.08(2)(b).

### Rental Agreements (Leases)

- ✓ Once signed by all parties, the lease binds all parties. There is no "back-out period." To modify a written lease agreement, all parties must agree to the changes in writing.
- ✓ Many written leases require that each resident is responsible for meeting all the terms of the rental agreement even if the other residents do not do so. This is called "joint and several liability."
- ✓ Be careful in your roommate choices, you can be held responsible for their lease violations.
- ✓ Oral agreements are legal if for one year or less, but you may have trouble enforcing the terms of an oral agreement unless you have proof of the terms of the agreement. Write a letter to the landlord with your understanding of the agreement if you have trouble getting it in writing. Make sure to keep a copy. Wis. Stats. 704.03(1) and (5).
- ✓ Periodic tenancies (commonly referred to as "month-to-month" leases) are those where the rental agreement doesn't specify beginning or end dates and with the "period" being the time interval between the rent payments. For example, if you pay monthly, this is the period of your agreement. The lease can change after

any period if you are given sufficient written notice (for month to month tenants at least 28 days) prior to the next time rent is due. If you intend to move out and have a month-to-month lease, you must provide at least 28 days written notice to terminate the agreement. Wis. Stats. 704.01(2), 704.19(3), 704.21(2).

### Illegal Rental Agreement Clauses

The lease is void and unenforceable if it:

- ✓ Requires you to pay the landlord's attorney and legal fees. A judge may order you to pay a very limited flat fee of no more than \$300.00 after a trial. MGO 32.11(3), Wis. Stats. 704.44(4m). Wis. Stats. 814.04(1), ATCP 134.08(4).
- ✓ Allows your landlord to go to court as your representative and admit your guilt in the landlord's dispute with you. MGO 32.11(4), Wis. Stats. 704.44(5m). ATCP 134.08(5).
- ✓ Requires you to pay rent before the date it is regularly due. MGO 32.11(2), Wis. Stats. 704.44(3m), ATCP 134.08(3).
- ✓ Waives the landlord's duty to deliver the rental unit in a fit or habitable condition and/or to maintain the premises during the tenancy. MGO 32.11(7), Wis. Stats. 704.44(8), ATCP 134.08(8).
- ✓ Authorizes eviction other than by a judicial eviction procedure. MGO 32.11(1), Wis. Stats. 704.44(2m), ATCP 134.08(2).
- ✓ Relieves the landlord from liability for property damage or personal injury caused by negligent acts or omissions of the landlord. MGO 32.11(5), Wis. Stats. 704.44(6), ATCP 134.08(6).
- ✓ Requires you to accept liability for personal injury arising from causes clearly beyond your control as a tenant. MGO 32.11(6), Wis. Stats. 704.44(7), ATCP 134.08(7).
- ✓ Contains a provision that, if enforced, would violate the law. MGO 32.11(8).
- ✓ Requires you to pay the cost of carpet cleaning or shampooing unless there is damage beyond "normal wear and tear." MGO 32.11(9), Wis. Stats. 704.28(3).
- ✓ Authorizes the termination of the tenancy "based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is the victim." Wis. Stats. 704.44(9).
- ✓ Allows the landlord to increase rent, decrease services, bring an eviction action or refuse to renew a lease because the tenant has sought-law enforcement services, health services or safety services. Wis. Stats. 704.44(1m).
- ✓ If the landlord threatens to increase rent, decrease services, bring an eviction action, or refuses to renew the lease, because the tenant has sought law enforcement services, health services or safety services, then the illegal action is void and unenforceable. 704.44(1m).

### Termination of Lease by Tenant for Imminent Threat of Serious Physical Harm

A tenant may terminate their lease and move if they or their child face an imminent threat of serious physical harm from another person if they remain on the premises. The tenant must provide the landlord with a certified copy of an injunction [the long term injunction issued by a court after the hearing, not the temporary one issued when you

apply], protecting the tenant or the tenant's child from the person; a condition of release ordering the person not to contact the tenant, or a criminal complaint alleging the person sexually assaulted or stalked the tenant or the tenant's child, or a criminal complaint filed against the person as a result of a domestic abuse offense. Under these circumstances, if the tenant provides such a certified copy and provides a notice that complies with Wis. Stats. 704.21, the tenant is not liable for rent after the end of the month following the month in which notice is given. In addition, if such certified documents have been provided to the landlord, the tenant may request the landlord to change to locks at the tenant's expense.

### Required Notice in the Lease

The following must be included in every residential lease entered into or renewed after 3/1/14:

#### Notice Of Domestic Abuse Protections

(1) As provided in section 106.50 (5m) (dm) of the Wisconsin statutes, a tenant has a defense to an eviction action if the tenant can prove that the landlord knew, or should have known, the tenant is a victim of domestic abuse, sexual assault, or stalking and that the eviction action is based on conduct related to domestic abuse, sexual assault, or stalking committed by either of the following:

(a) A person who was not the tenant's invited guest.

(b) A person who was the tenant's invited guest, but the tenant has done either of the following:

1. Sought an injunction barring the person from the premises.

2. Provided a written statement to the landlord stating that the person will no longer be an invited guest of the tenant and the tenant has not subsequently invited the person to be the tenant's guest.

(2) A tenant who is a victim of domestic abuse, sexual assault, or stalking may have the right to terminate the rental agreement in certain limited situations, as provided in section 704.16 of the Wisconsin statutes. If the tenant has safety concerns, the tenant should contact a local victim service provider or law enforcement agency.

(3) A tenant is advised that this notice is only a summary of the tenant's rights and the specific language of the statutes governs in all instances.

### Copies of Rental Agreements & Receipts

- ✓ You must be allowed to inspect the rental agreements and any rules and regulations that apply before you are asked to sign the agreement or pay any fees, and you must be given a copy at the time of agreement. MGO 32.06(1), ATCP 134.03(1).
- ✓ The landlord is required to provide receipts for rent, security deposits and earnest money paid in cash. If a security deposit or earnest money is paid by check with a notation describing the purpose of the check, the landlord does not need to provide a receipt unless specifically requested by the tenant. ATCP 134.03(2).

- ✓ Any promise to clean, repair or make improvements must be in writing with a specific date of completion with a copy given to the tenant. MGO 32.09(1), (2), ATCP 134.07(1)(2). If the landlord fails to put it in writing, that does not mean they don't have to do it, it means they are in violation of these codes and also still have to do it. It is harder to prove if it is not in writing. If the landlord won't put promises in writing, then the tenant should write the landlord stating that the tenant's understanding of the promises made.

### Safety Issues

- ✓ If the building has two or more apartments that are accessed from a common area, the exterior door, doors leading to basements, basement laundries and any storage areas must be locked at all times, and your residence must have a doorbell or buzzer system to alert you when you have guests. MGO 27.05(2)(h)
- ✓ All rental units are to have smoke alarms installed and maintained in each bedroom, in every sleeping area, and within 6 feet of each door leading to a bedroom or sleeping area, and on each floor of the building. Smoke detectors must be hard wired or have 10 year lithium batteries. The landlord is responsible for installing the smoke alarms, tenants are responsible for maintaining the alarms and notifying the landlord if an alarm becomes inoperable. Tenants are not to tamper with, remove, alter, damage, or make the smoke alarm inoperable.
- ✓ Landlords no longer have to educate tenants about fire safety (MGO 34.907(1)(d)) and no longer use the form notifying the tenant that they are in violation of the ordinance if they tamper with a smoke alarm. MGO 32.06(4), Wis. Stat. 66.0104(2)(d)1., 2013 Wis. Act 76, Sec. 2.
- ✓ Carbon monoxide detectors, if installed or required, shall be maintained and not tampered with.

### Check-in/Check-out Forms and Procedures

- ✓ A landlord must provide to a new residential tenant when the tenant commences his or her occupancy of the premises a check-in sheet that the tenant may use to make comments, if any, about the condition of the premises. The tenant shall be given at least 7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement. Wis. Stat. §704.08.
- ✓ Return the completed form to the landlord. If you want items repaired, make a separate written request.
- ✓ The landlord must inform you that you may request a written list of the physical damages or defects charged to the previous tenant's security deposit. ATCP 134.06(1).

### Tenant's Right to Privacy & Exclusive Possession

- ✓ A landlord cannot change the locks on your apartment as a means of forcing you to move or to limit your access to the premises. (MGO 32.05(1)(a), ATCP 134.09(7)).
- ✓ A landlord cannot confiscate any of your property unless they have a lien that you agreed to in a "non-standard rental provision." MGO 32.05(1)(c), MGO 32.12(3), ATCP 134.09(4).
- ✓ If the landlord notifies the tenant in the lease that the landlord will not store the tenant's property left behind after the lease expires and the tenant moves, the landlord may declare the tenant's property left behind after the lease has expired, the tenant had moved out early or the tenant has been evicted to be abandoned and may dispose of it in any manner the landlord determines is appropriate. Wis. Stats. 704.05(5)bf.
- ✓ A landlord must give you 12 hours notice prior to entering your apartment to show the property for sale or lease. Entry must be made at reasonable times, and entry can be made on less notice only if you give permission to do so, or it is an emergency. MGO 32.05(1)(d), ATCP 134.09(2).
- ✓ A landlord may regulate guests by stating a guest policy in the lease. MGO 32.05(1)(g) Wis. Stats. 66.0109(2)(d)1.
- ✓ A landlord must announce their presence and identify themselves before entering your apartment. MGO 32.05(1)(f), ATCP 134.09(2)(d).

### Repairs

- ✓ If repairs are needed, contact your landlord and give them a reasonable time to fix the problem. If they do not fix the problem, call the Building Inspector at (608)266-4551. If your landlord fails to repair or properly maintain your apartment or fails to comply with an order of the Building Inspection Division, you may be entitled to abate/reduce part of your rent. Do not withhold rent for repair problems without first contacting Building Inspection or one or more of the agencies listed in this brochure for advice or assistance. MGO 32.04, Wis. Stats. 704.07(4).
- ✓ If the building owner has failed to comply with orders to make repairs from the Building Inspection Division, a tenant may arrange for repairs to be made to the unit and subtract that amount from their rent. The tenant must give official notice to the landlord that they intend to use these self-help procedures at least ten days prior to commencing repairs. Qualified professionals, as required by law, must do repairs and the cost of repairs may be deducted from rent. This self-help repair procedure can be used in conjunction with rent abatement. MGO 32.17(2).

### Subletting and Breaking a Lease

- ✓ Most leases require the permission of the landlord prior to subletting. If you sublet part of your apartment, or the entire apartment, you are still responsible for all terms of the original agreement, unless all parties (including the landlord)

agree in writing to terminate the lease or change any other terms. Sublet agreements should always be put in writing. Wis. Stat. §704.09.

- ✓ If you need to break your lease, and choose not to sublet, the landlord is responsible for finding a new tenant if you stop paying your rent. The landlord must make a reasonable effort to find a new tenant. Reasonable effort means those steps that the landlord would have taken to rent the premises provided these are in accordance with local practice. However, you will be responsible for the rent owed until a new tenant is found. Wis. Stat. §704.29.
- ✓ The landlord must notify you if the property is in foreclosure. If the landlord fails to do so, the lease may be voidable, or monetary penalties may apply, depending on your situation. In certain circumstances, you may be able to stay until the end of your lease. The federal “Protecting Tenants at Foreclosure Act,” Public Law 111-22 Sec. 701 – 704 (2009), applies to all foreclosure sales after the law was signed on May 20, 2009 until December 31, 2014.

### Retaliation

- ✓ A landlord cannot evict you or threaten to do so, because you have made a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency, asserted a right relating to residential tenancies, or complained to the landlord about a housing code violation. Wis. Stats. 704.45, and MGO 32.12(4) and 32.15.

### Eviction

- ✓ The first step in the eviction process is for the landlord to give you written notice of the lease violation. The notices will vary depending upon your type of lease, the type of violation and previous violation notices you have received. Generally, a tenant with a year-long lease will have the right to fix the problem the first time and stay in the apartment. If you get one of these notices contact the landlord right away and try to fix the problem. Wis. Stats. 704.17.
- ✓ Your landlord cannot force you to leave the apartment without an eviction order from a judge. ATCP 134.08(2), 134.09(7).
- ✓ You have the right to appear in small claims court to contest the eviction notice. The landlord must prove to the court that you have violated the lease and that they are entitled to evict you.
- ✓ If you are evicted by a judge, or if a default judgment is issued because you did not appear in court, the Sheriff is the only person who can remove you from the unit. However, the Sheriff is no longer required to remove property if the landlord notifies the sheriff that the landlord does not need the Sheriff’s assistance. If the Sheriff is used, the Sheriff will give you a date and time to be out by or they will remove. This forced removal can be very costly and you can be held responsible for all the costs of moving and storing your property as well as additional unpaid rent if you get evicted. The landlord has the duty to minimize these costs by trying to re-rent the apartment. Wis. Stats. 704.29, 799.44, 799.45.



- ✓ Any actions taken by the landlord other than the eviction process required by state law might be an illegal eviction. Actions such as turning off heat, electricity or water, removing doors or windows or other actions that make it impossible to live in the unit are prohibited by Madison General Ordinances and Wisconsin law. Madison Ordinances also prohibit a landlord from threatening to take any of these actions. ATCP 134.09(5), (7), MGO 32.12(5).
- ✓ Employees, agents of the member of an LLC and employees of landlord companies may start eviction actions and appear in small claims court without being a lawyer. Wis. Stats. 799.06(2) and 799.40(1).
- ✓ Landlords may accept rent or other payments from a tenant while an eviction is pending without affecting the validity of the eviction action. Wis. Stats. 799.40(1m).

#### Termination of Lease by Tenant for Imminent Threat of Serious Physical Harm

- ✓ A tenant may terminate their lease and move if they or their child face an imminent threat of serious physical harm from another person if they remain on the premises. The tenant must provide the landlord with a certified copy of an injunction protecting the tenant or the tenant's child from the person (not the temporary one issued when you apply, but the permanent long term one issued by the judge after your hearing); a condition of release ordering the person not to contact the tenant, or a criminal complaint alleging the person sexually assaulted or stalked the tenant or the tenant's child, or a criminal complaint filed against the person as a result of a domestic abuse offense. Under these circumstances, if the tenant provides such a certified copy and provides a notice that complies with Wis. Stats. 704.21, the tenant is not liable for rent after the end of the month following the month in which notice is given. In addition, if such certified documents have been provided to the landlord, the tenant may request the landlord to change to locks at the tenant's expense.

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  - ✓ (a) A person who was not the tenant's invited guest.
  - ✓ (b) A person who was the tenant's invited guest, but the tenant has done either of the following:

- ✓ 1. Sought an injunction barring the person from the premises.
- ✓ 2. Provided a written statement to the landlord stating that the person will no longer be an invited guest of the tenant and the tenant has not subsequently invited the person to be the tenant's guest.
- ✓ (2) A tenant who is a victim of domestic abuse, sexual assault, or stalking may have the right to terminate the rental agreement in certain limited situations, as provided in section 704.16 of the Wisconsin statutes. If the tenant has safety concerns, the tenant should contact a local victim service provider or law enforcement agency.
- ✓ (3) A tenant is advised that this notice is only a summary of the tenant's rights and the specific language of the statutes governs in all instances.

### Lease Expiration & Automatic Renewal

- ✓ Your lease may have an automatic renewal clause; however, your landlord cannot enforce such a clause unless they give you a separate written notice of the pending automatic renewal or extension at least 15 days, but not more than 30 days before its stated effective date. ATCP 134.09(3), Wis. Stats. 704.15, MGO 32.12(2).
- ✓ If you "hold over," or stay beyond the expiration date of a valid termination notice or expiration of a lease, the landlord may sue you in court for damages. If the judge finds that you remained in possession of the property without the consent of the landlord, the judge is required to order you to pay a minimum of double the daily rent to the landlord for each day you stayed in the apartment after the notice to vacate or the expiration of your lease. Wis. Stats. 704.25(1), 704.27.

### Security Deposits

- ✓ Your security deposit or partial deposit with a written itemized statement showing the specific reasons for any deductions must be mailed within 21 days of the termination of the rental agreement or within 21 days of the end of the lease. MGO 32.07(7),-ATCP 134.06(4), Wis. Stats. 704.28.
- ✓ If you move out early, and the unit is not re-rented, they can return your deposit up to 21 days after the end of the lease. ATCP 134.06(2)(b); Wis. Stats. 704.28(4).
- ✓ Routine painting or carpet cleaning, if there is no unusual damage caused by tenant abuse, cannot be deducted from security deposit. MGO 32.07(14), ATCP 134.06(3)(c), Wis. Stat. 704.18(3).
- ✓ Cashing a check for partial payment does not mean you waive your rights to seek the full amount owed. MGO 32.07(7)(d), ATCP 134.06(2)(e).
- ✓ Remember to provide a forwarding address for your security deposit. ATCP 134.06(5).
- ✓ If the landlord makes deductions which are not permitted, or fails to send your deposit or explanations of the deductions within 21 days, then the Tenant is entitled to double their damages, plus attorneys fees. Wis. Stats. 100.20(5).

### Late Fees

- ✓ Late fees cannot be charged, except as specifically provided under the rental agreement. ATCP 134.09(8)(a).
- ✓ Landlords can charge anything they want for a late fee, instead of being limited to 5% of the monthly rent, as was previously the cap (MGO 32.12(11) is preempted). Landlords can also charge more than 5% if the tenant doesn't agree to prepay the rent at a discounted rate. MGO 32.12(10), MGO 32.07(2)(e), Wis. Stat. 66.0104(2)(c), 2013 Wis. Act 76, Sec. 1.
- ✓ A landlord cannot charge a late fee for failure to pay a late fee. All payments shall be applied to rent before being applied to a late fee. ATCP 134.09(8)(b)(c), MGO 32.12(11).

### Parking

- ✓ Landlords have new rights to have vehicles towed on private property. If the property is properly posted, the landlord can have unauthorized vehicles towed at the vehicle owner's expense without first having the vehicle ticketed. If the property is not properly posted, the landlord must first have the vehicle ticketed, and then it may be towed at the vehicle owner's expense. WI Stats. 349(3m), Trans 319.