

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

Date: October 13, 2018

MEMORANDUM

TO: Landlord and Tenant Issues Committee

FROM: Steven C. Brist, Assistant City Attorney

RE: **Additional Changes to Landlord Tenant Law Contained in 2017 Wisconsin Act 317 for Possible Inclusion in Rights and Responsibilities Pamphlet**

1. **Notice to owner when disconnecting utilities.** If requested by the landlord and authorized by the tenant a public utility is required notify the owner of any pending disconnection of services due to tenant's nonpayment of past due charges, and may provide information to the owner by telephone. Wis. Stat. 196.643(3),
2. **Proof of eviction not required to resume utility service to owner.** A public utility may not require the owner to provide proof of eviction or other evidence that the tenant has vacated a rental unit as a condition for providing or resuming utility services if the service is placed and maintained solely in the owner's name. Wis. Stat. 196.643(4)
3. **Repairs.** If the premises are damaged by the action or inaction of the tenant, the landlord may charge a reasonable hourly rate, for their time and their materials, and for time spent purchasing or providing materials, supervising agents or employees, and hiring a third-party contractor. Wis. Stat. 704.07(3)(a),
4. **A landlord may charge for a credit check fee.** The landlord may charge for the actual amount for a credit check up to a maximum amount of \$25. State law requires that: 1) the credit check come from a credit agency that provides reports on a nationwide basis, 2) the tenant be informed of the costs in advance and, 3) the tenant is entitled to a copy of the credit report. Tenants may avoid these charges by supplying

the landlord with a credit report that is less than 30 days old that is from a credit reporting agency that provides reports on a nationwide basis. Wis. Stat. 704.085(1)(a) & (b)

5. **A landlord may charge out-of-state residents for a background check.** A landlord may charge up to \$25 for a background check if a prospective tenant is currently living out of state, in addition to the up to \$25 credit check fee. The tenant must be notified of the charge in advance and landlords must provide a copy of the report to the prospective tenant. Wis. Stat. 704.085(2)

6. **A landlord may provide certain documents electronically if agreed to in the lease.** A rental agreement may include a provision permits the landlord to provide and indicate agreement by electronic communication via email, text or fax for any of the following:

- a. Copies of the rental agreement and any documents related to the rental agreement Wis. Stat. 704.10(1),
- b. A Security deposit or copies of any documents relating to the accounting for and disposition of the security deposit and security deposit refund Wis. Stat. 704.10(2),
- c. A promise made prior to entering into the rental agreement to clean, repair or improve the premises Wis. Stat. 704.10(3),
- d. Advance notice of entry to inspect, make repairs, or show the unit at reasonable times with advance notice Wis. Stat. 704.10(4),

7. **Late fees are considered rent for eviction purposes.** For the purposes of 5-, 14-, or 30-day notices for non-payment, "rent" means any past due rent and any late fees owed for rent that is past due. Wis. Stat. 704.17(1g),

If the eviction notice includes an incorrect amount due the notice is valid unless:

- a. the landlord's statement is intentionally incorrect, or
- b. the tenant paid or tendered payment of the amount the tenant believes was past due. Wis. Stat. 704.17(4m)

8. **Eviction summons and complaints need not be notarized.** A court may not require that the summons and complaint in an eviction action be notarized. Wis. Stat. 799.06(3)(b),

9. **A tenant must raise valid legal grounds that there is a contested issue to schedule a hearing before a judge at Small Claims Court.** A determination must be

made on the return date on the summons that there are valid legal grounds that a contested legal issue exists before a matter is scheduled for a full hearing before a judge. Wis. Stat. 799.206(3),

10. **Proof of certified mailing is sufficient to establish that a proper notice terminating tenancy has been provided.** The landlord is not required to provide an affidavit of service. Wis. Stat. 799.40(1g),

11. **Estoppel is not a defense to an action of eviction or claim for damages.** Even if a tenant and landlord develop a custom or routine practice that is contrary to their lease agreement, the landlord can still evict the tenant for not following the lease agreement. Wis. Stat. 799.40(1s),

12. **Limit on length of stay for emergency assistance.** If a tenant qualifies for emergency assistance for families with needy children under Sec. 49.138 Wis. Stats., a stay of an eviction may remain in effect for up to 10 days. No stays of eviction may be granted after a writ of restitution has been issued for the benefit of the landlord. Because such writs must be issued immediately after a judgement, this is a significant limitation on the likelihood that a stay will be granted. Wis. Stat. 799.40(4)(a)

13. **Service animals and emotional support animals.** If an individual has a disability related need for a service animal or an emotional support animal, it is discrimination to refuse to rent to, cause the eviction of, require additional compensation from, or engage in harassment of, the individual.

a. **Definitions**

i. **A service animal** is an animal that is trained to do work or perform tasks for an individual.

ii. **Emotional Support Animals.** Under Wisconsin law a landlord must generally provide an exception to a “no pets” policy for an individual who has a disability related need for an animal who gives emotional support, well-being, comfort, or companionship but is not trained to perform tasks for an individual with a disability.

b. **Documentation.** A landlord may request that a tenant submit to the landlord reliable documentation that the tenant has a disability and reliable documentation of the disability-related need for the animal, unless the disability is readily apparent or known. If the disability is readily apparent or known but the disability-related need for the animal is not, the tenant may be requested to submit reliable documentation of the disability-related need for the animal.

c. **Responsibility for Sanitation.** A tenant who keeps a service animal or an emotional support animal shall accept liability for sanitation with respect to, and damage to the premises caused by, the animal.

d. **Denial.** A landlord may deny a tenant the ability to keep an animal in housing if: the specific animal in question poses a direct threat to a person's health or safety that cannot be reduced or eliminated by another reasonable accommodation; the tenant is not disabled, does not have a disability-related need for the animal or fails to provide the requested documentation; or allowing the animal would impose an undue financial and administrative burden or would fundamentally alter the nature of services provided by the lessor, owner or representative; or the specific animal in question would cause substantial physical damage to a person's property that cannot be reduced or eliminated by another reasonable accommodation.

e. **Misrepresentation by tenant.** A tenant shall forfeit not less than \$500 if he or she, for the purpose of obtaining housing, intentionally misrepresents that he or she has a disability or misrepresents the need for an emotional support animal to assist with his or her disability.

f. **Misrepresentation by health professional.** A licensed health professional, including a physician, psychologist, social worker or other licensed health professional shall forfeit not less than \$500 if he or she, for the purpose of allowing the patient to obtain housing, misrepresents that his or her patient has a disability or misrepresents his or her patient's need for an emotional support animal to assist with his or her patient's disability.