

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

Date: 6/14/18

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 information is not legal advice. Citations are for guidance and may not apply to every situation. For specific questions, please 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)

For Tenants: General Tips to Avoid Rental Problems:

- ✓ Tenants should a rental file which includes the lease, addendums, check-in/out forms, copies of letters/emails/text to and from the landlord, housing inspection reports, notices to enter, and any documentation 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 landlords when a problem arises, and keep in general good communication with the landlord as well as maintaining a positive relationship
- ✓ If it is within a tenant's budget, purchase 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:

- ✓ New Wisconsin law dictates that landlords no longer need to tell applicants why they were denied housing. In addition, landlords no longer need to tell tenants why their leases were not renewed. **Wis. Stat. §66.0140(2)(d)1. Wis. Stat. §66.02104(2)(d)1.; 2013 Wis. Act 76, Sec. 2.**
- ✓ A landlord may not deny housing because of 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).**
- ✓ Tenants cannot be denied housing solely because they have applied for or currently receive Section 8 and leases cannot be terminated early solely because a tenant starts receiving Section 8 assistance in the middle of their tenancy. If a tenant has concerns about being denied housing because of Section 8 status, tenants can contact the Fair Housing Council, Wisconsin's Equal Rights Division, or City of Madison Department of Civil Rights. 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 tenants pay an application fee (deposit, or earnest money) and have their application is rejected, or withdraw an application before approval, the landlord must return the money at the end of the next business day. The landlord cannot hold a tenant's earnest money for more than three business days unless tenants 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 the application is approved but the tenant does 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 tenants 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. The same applies before the landlord can accept any earnest money or security deposit from a prospective tenant.
- ✓ The landlord must disclose which utilities are the tenant's responsibility to pay. If the utilities are not separately metered, the landlord must disclose how it is determined how much each tenant pays for utilities. **Wis. Stat. §704.07(2)(bm) 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. Tenants should take care in choosing roommates, as all tenants can be held responsible for their lease violations; this is called "joint and several liability."
- ✓ Oral agreements are legal if for one year or less, but tenants may have trouble enforcing the terms of an oral agreement unless they have proof of the terms of the agreement. Tenants should write a letter to the landlord with their understanding of the agreement if the tenants have trouble getting the agreement in writing and 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 does not 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 prior to the next time rent is due. For month-to-month agreements, tenants receive at least 28 days' notice. If tenants intend to move out and have a month-to-month lease, they 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 tenants to pay the landlord's attorney and legal fees. A judge may order tenants 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 the landlord to go to court as the tenants' representative and admit their guilt in the dispute. **MGO 32.11(4), Wis. Stats. 704.44(5m), ATCP 134.08(5)**
- ✓ Requires tenants 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 tenants to accept liability for personal injury arising from causes clearly beyond a tenant's control. **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 tenants 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. Additionally, 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 lease-illegal action is void and unenforceable. **Wis. Stats. 704.44(1m)**

Copies of Rental Agreements & Receipts

- ✓ Tenants must be allowed to inspect the rental agreements and any rules and regulations that apply before they are asked to sign the agreement or pay any fees, and they 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. If the landlord fails to

put it in writing, that does not mean they do not have to follow through, it means they are in violation of these codes and also still have to correct the violations. The existence of these agreements are harder to prove if the agreement is not in writing. If the landlord will not put promises in writing, then the tenant should write the landlord stating the tenant's understanding of the promises made. **MGO 32.09(1), (2), ATCP 134.07(1)(2).**

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 residences must have a doorbell or buzzer system to alert tenants when they 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.
- ✓ Carbon monoxide detectors, if installed or required, shall be maintained and not tampered with.

Check-in/Check-out Forms and Procedures

- ✓ The landlord must provide tenants with a Check-in form when they commence occupying the premises. **Wis. Stats. 704.08**
- ✓ The landlord must give tenants seven (7) days after moving in to note anything that was dirty, damaged, broken or missing when they moved in. **Wis. Stats. 704.08**
- ✓ Tenants should return the completed form to the landlord. If tenants want items repaired, they must make a separate written request.

The landlord must inform tenants that they 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 an apartment as a means of forcing tenants to move or to limit a tenant's access to the premises. **MGO 32.05(1)(a), ATCP 134.09(7)**
- ✓ A landlord cannot confiscate any property unless they have a lien that the tenants 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 dispose of 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. The landlord may dispose of the property in any manner they determine is appropriate. **Wis. Stats. 704.05(5)(bf)**

- ✓ A landlord must give the tenants 12 hours notice prior to entering their 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 tenants 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 the tenant's apartment. **MGO 32.05(1)(f), ATCP 134.09(2)(d)**

Repairs

- ✓ If repairs are needed, tenants need contact their landlord and give the landlord a reasonable time to fix the problem. If the landlord does not fix the problem, call City of Madison Building Inspection at (608)266-4551. If a landlord fails to repair or properly maintain the apartment, or fails to comply with an order of the Building Inspection Division, tenants may be entitled to abate/reduce part of their rent. Tenants should 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 tenants sublet part of their apartment, or the entire apartment, they 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 a tenant breaks their lease and stops paying rent, the landlord is responsible for finding a new tenant. 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, the tenant will be responsible for the rent owed until a new tenant is found. **Wis. Stat. §704.29**
- ✓ The landlord must notify tenants 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 the situation. In certain circumstances, tenants may be able to stay until the end of their lease. The federal "Protecting Tenants at Foreclosure Act," Public Law allows renters whose homes were in foreclosure to remain in

their homes for at least 90 days or for the term of their lease, whichever is greater.

Retaliation

- ✓ A landlord cannot evict a tenant, or threaten to do so, if a tenant has 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 the tenant written notice of the lease violation. The notices will vary depending upon the type of lease, the type of violation, and previous violation notices tenants 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 a tenant receives one of these notices, they must contact the landlord right away and try to fix the problem. **Wis. Stats. 704.17.**
- ✓ If the tenant has not fixed the problem by the deadline, then the landlord can file an eviction action in small claims court pursuant to the rules in Chapter 799.40. Tenants will be given notice of when to appear and state their position about whether they should be evicted. Until a court issues an order for a tenant's eviction, the landlord cannot evict said tenant.
- ✓ 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)**
- ✓ Tenants have the right to appear in small claims court to contest eviction notices. The landlord must prove to the court that the tenant has violated the lease and that the landlord can evict the tenant.
- ✓ Even if a tenant does not plan to contest their eviction, tenants may be able to set up a payment plan in court. **ATCP 134.08(2), 134.09(7)**
- ✓ If a tenant is evicted by a judge, or if a default judgment is issued because the tenant did not appear in court, the Sheriff is the only person who can remove tenants from the unit. However, the Sheriff is no longer required to dispose of 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 provide a date and time to be out by or they will forcibly remove tenants. This forced removal can be very costly and tenants can be held responsible for all the costs of moving and storing property, as well as additional unpaid rent if the tenant is 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. **ATCP 134.09(5), (7), MGO 32.12(5)**

- ✓ 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. This injunction must be the permanent, long-term one issued by the judge after the hearing, not the temporary one issued upon application; a condition of release ordering the person not to contact the tenant; 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 the 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

Lease Expiration & Automatic Renewal

- ✓ A tenant's lease may have an automatic renewal clause; however, the landlord cannot enforce such a clause unless they give the tenant 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 tenants "hold over," or stay beyond the expiration date of a valid termination notice or expiration of a lease, the landlord may sue the tenants in court for damages. If the judge finds that the tenants remained in possession of the property without the consent of the landlord, the judge is required to order the tenants to pay a minimum of double the daily rent to the landlord for each day they stayed in the apartment after the notice to vacate, or the expiration of the tenants' lease. **Wis. Stats. 704.25(1), 704.27**

Security Deposits

- ✓ A tenant's security deposit or partial deposit with a writte, 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 tenants move out early and the unit is not re-rented, the landlord can return the tenants' 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 tenants waive their rights to seek the full amount owed. **MGO 32.07(7)(d), ATCP 134.06(2)(e)**
- ✓ Tenants need to provide a forwarding address for their security deposit. **ATCP 134.06(5)**
- ✓ If the landlord makes deductions which are not permitted, or fails to send a tenant's deposit or explanations of the deductions within 21 days, then the tenant is entitled to double their damages plus attorney 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, as long as their late-fee policy is included in a tenant's lease. **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.**