

CITY OF MADISON, WISCONSIN

AN ORDINANCE \_\_\_\_\_  
Amending Section 32.04, relating to rent abatement procedures.

PRESENTED \_\_\_\_\_  
REFERRED Landlord and Tenant Issues Committee

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Date: January 19, 2022  
SPONSOR:

DRAFT

DRAFTER'S ANALYSIS: Under current Ordinances, an eligible tenant must seek rent abatement by filing a petition for rent abatement with the Building Inspection Division. Under this proposal, the Building Inspection Division orders the landlord to pay rent abatement, if the landlord fails to correct rent impairing violations by the original due date. The landlord has the right to contest the Building Inspection Unit's order to pay abatement to the tenant by filing a petition to appeal the order to pay rent abatement. If the Landlord files an appeal, a hearing is held before the hearing examiner to determine whether the landlord did not fail to correct the violations, the landlord was not responsible for the violations or that the tenant unreasonably refused entry to the landlord to for the purpose of correcting the violations.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (2) entitled "Notice" of Section 32.04 "Rent Abatement" of the Madison General Ordinances is amended as follows:

"(2) Notice. ~~A list of addresses of rental properties~~ A notice of uncorrected rent-impairing violations shall be ~~published each week in the official City paper~~ sent by certified mail to the landlord and tenant of the subject property within ten (10) days of the reinspection which reveals noncompliance. Such notice shall indicate that the tenants ~~may be~~ are eligible for rent abatement at the maximum percentage of rent abatement available for each uncorrected rent-impairing violation and shall state that ~~any such tenant must request~~ the tenant or landlord may contest the authorization to abate rent within thirty (30) days of the notice of eligibility by the Building Inspection Division of the Department of Planning and Community and Economic Development. A copy of the notice shall also be sent by first class mail, addressed to "Occupant" at each rental unit with uncorrected rent-impairing violations, on or before the mailing date of the ~~publication~~ the certified mail notice. Together with the copy of the notice there shall be mailed a cover letter including, but not limited to, the following information: Notice of Eligibility to Apply for Rent Abatement - The owner of ~~your apartment~~ the subject property has not followed an order from the City of Madison Building Inspection Division to correct Housing Code violations. Because the owner has not complied, ~~you may~~ the tenants will be able to get a portion of ~~your~~ their rent back, and may be able to abate a portion of their rent for future rent payments, pursuant to Madison General Ordinances Sec. 32.04. Along with said cover letter, a letter shall also be included with the copy of the notice, which shall include, but will not be limited to, the following information: Notice of Eligibility to Seek Self Help Repair - In addition to seeking rent abatement, because the owner of ~~your apartment~~ the subject property has not followed an order from the City of Madison Building Inspection Division to correct Housing Violations you, the tenant will ~~may~~ have the right to correct these violations and deduct the amount of the repairs from ~~your~~ their rent, if ~~you~~ the tenants follow the procedures in Madison General Ordinances Sec. 32.17.

Approved as to form:

(a) Any Order from the City of Madison Building Inspection Division issued to the owner of a rental unit to correct Housing Code violations shall include, but not limited to, the following information: Notice of Rent Abatement for Uncorrected Housing Code Violations. If you do not correct these Housing Code violations by the date provided in this Order, the City of Madison Building Inspection Division will order that the tenants will be able to get a portion of their rent back, and may also be able to abate a portion of their future rent payments pursuant to Madison General Ordinances Sec. 32.04, until the required repairs are completed,"

2. The definition of "Affected Applicant" found in Subsection (3) entitled "Definitions" of Section 32.04 "Rent Abatement" of the Madison General Ordinances is amended as follows:

"Affected Applicant. In rent abatement categories where the percentage of rent abatement is expressed as a certain percentage or a certain dollar amount "per affected applicant", abatement applies only to those dwelling units/lodging rooms affected by the violation and only if the Building Inspection Division has ordered abatement. a tenant therein has applied for rent abatement."

3. Subsection (4) entitled "Authorization of Rent Abatement" of Section 32.04 "Rent Abatement" of the Madison General Ordinances is amended as follows:

"(4) Authorization of Rent Abatement.

(a) Eligibility. Notwithstanding any other provision of law or any agreement, whether oral or written, tenants and provider agencies shall be eligible to abate a portion of the total rental payments, in accordance with this section at the maximum percentage available set forth in the Schedule of Rent Impairing Violations in (d) below, and pursuant to the order of the Building Inspection Division of the Department of Planning and Community and Economic Development or the Director of Public Health Madison and Dane County, the order of a Rent Abatement Hearing Examiner or by written agreement of the parties, if the landlord of the residential premises fails to comply with an order of the Building Inspection Division of the Department of Planning and Community and Economic Development or the Director of Public Health Madison and Dane County to correct by the original due date, unless such due date is found to be unreasonable upon appeal to the Board of Building Code, Fire Code, Conveyance Code and Licensing Appeals pursuant to Sec. 29.18(3) of the Madison General Ordinances, a violation which is "rent impairing" as that term is defined in Sec. 32.04(3). Any such order of the Building Inspection Division or Public Health Madison and Dane County shall specifically state that uncorrected violations ~~may~~ will be eligible for abatement in addition to any other penalties provided by law unless the landlord files a request for a hearing contesting the order within thirty (30) days. A tenant's eligibility to abate rent shall apply only to the eligible tenant(s) or successor tenant(s) upon whose rented premises the uncorrected rent impairing violation exists or to any eligible tenant(s) or successor tenant(s) in a building with an uncorrected rent impairing violation in a common area. A provider agency's ability to abate rent shall apply only to provider agencies which pay or have paid a portion of an eligible tenant's rent while an uncorrected rent-impairing violation exists on the premises or common area of the eligible tenant's building. Where an award is made and rent has been paid by both a tenant and a provider agency, the tenant's portion of the award shall be up to but not greater than the amount of rent the tenant has paid. Where the award amount is less than or equal to the amount of rent the tenant paid, the tenant shall receive all of the award. No rent may be abated pursuant to this Ordinance until abatement is ordered by the ~~Rent Abatement Hearing Examiner~~ Building Inspection Division Department of Planning and Community and Economic Development or the Director of Public Health Madison and Dane County or the Rent Abatement Hearing Examiner or authorized by written agreement between the parties.

(b) Other Remedies. The right of a tenant to abate a portion of the rent as established by this section shall not preclude or affect in any way the tenant's right to abate under Chapter 704 of the Wisconsin Statutes; nor shall it preclude or affect in any way the tenant's or

landlord's right to any of the remedies provided by the laws of the State of Wisconsin and the Madison General Ordinances pertaining to the relationship of landlord and tenant.

- (c) Designation of Rent Impairing Violations. The Common Council shall, after notice and public hearing, adopt a list of violations of the provisions of chapters 7, 18, 19, 27, 28, 29, 30 and 32 of the Madison General Ordinances to be classified as "rent impairing" as above defined. Said list shall contain a brief description of the condition constituting the violation, the section of the ordinances violated and the percentage range of possible rent abatement. The Landlord and Tenant Issues Committee may at any time recommend a change in the number of violations, their descriptions or the percentage of possible rent abatement for a particular violation but no such change shall be made except in the manner set forth above.
- (d) Schedule of Rent Impairing Violations. A tenant authorized to abate rent shall do so in accordance with the following schedule with the precise amount to be set by the ~~Rent Abatement Hearing Examiner after notice and hearing pursuant to Sec. 32.04(4)(e).~~ Building Inspection Division Department of Planning and Community and Economic Development or the Director of Public Health Madison and Dane County or by the Rent Abatement Hearing Examiner after an appeal hearing. ~~The Hearing Examiner Rent Abatement~~ may be ordered ~~abatement of rent~~ under multiple sections of the impairing list when a violation exists in a single room that serves multiple purposes such as a kitchen, living room and or bedroom. The maximum total abatement authorized pursuant to this ordinance shall not exceed ninety-five percent (95%) of the periodic rental payment, except where the premises have been vacated pursuant to an order of the Director of the Building Inspection Division of the Department of Planning and Community and Economic Development or pursuant to any other tenant right to remove from residential rental premises secured under Wisconsin law.
- (e) Procedure.
1. ~~Application for Contesting a Rent Abatement Order. An eligible tenant who may be~~ A landlord or a tenant of a property where a tenant is entitled to abate a portion of his/her rental payment under this Ordinance shall have thirty (30) days from the date of mailing of the certified letter containing the Notice of Uncorrected Rent Impairing Violations to file a request for a hearing on all or part of the authorization for rent abatement. The request shall be in writing on a form approved by the Landlord and Tenant Issues Committee, shall state with specificity the name and address of the landlord, the name and address of the tenant, the address of the subject property and the alleged rent impairing violation(s) ordered by the Building Inspection Division and shall be filed with the Building Inspection Division. Within ten (10) days of the filing of the request, the Department of Planning and Community and Economic Development staff shall select a Hearing Examiner from the Rent Abatement Hearing Examiner panel, set a time and place for the hearing and give the landlord and the tenant(s) written notice thereof. The hearing shall be held as soon as possible, but not prior to the end of the 30-day ~~filing~~ notice period. Notice of the hearing including a statement of the time, place and nature of the hearing shall be mailed to the landlord and tenant(s) at least ten (10) days prior to the hearing.
  2. Rent Abatement Hearing Examiner.
    - a. The Rent Abatement Hearing Examiner shall have the authority to conduct hearings on requests for appeals of an authorization for rent abatement and to determine the exact amount of rent, if any, which may be abated pursuant to this Ordinance.
    - b. The Rent Abatement Hearing Examiner shall have the authority to administer oaths and to issue subpoenas pursuant to Wis. Stat. § 885.01 at the request of the parties and shall be responsible for the fair, orderly

and impartial conduct of the rent abatement hearing and the preservation of the exhibits and the record therein.

- c. In any matter set for hearing the Rent Abatement Hearing Examiner may hold a conference between the parties to attempt to clarify or simplify the issues. In addition, prior to the hearing, upon request of the parties the Hearing Examiner may function as a mediator to encourage voluntary settlement.

3. Conduct of Hearing. The Rent Abatement Hearing Examiner shall conduct the hearing on the request for authorization for rent abatement, shall administer oaths to all witnesses and may issue subpoenas upon request of the parties. So far as practicable the rules of evidence in Wis. Stat. § 227.45 shall be followed. The landlord and the tenant may be represented by counsel or other representative, may call and examine witnesses and cross-examine witnesses of the other party. All proceedings and testimony shall be recorded on tape. If a review is sought of the Hearing Examiner's decision, a written transcript shall be prepared at no cost to the parties, provided however that a reasonable fee may be charged for copies. For all other purposes, a copy of the tape recordings shall be supplied to anyone requesting the same at the requester's expense. If either party requests a stenographic recording and transcription, the Landlord and Tenant Issues Committee shall make the necessary arrangements, but the expense shall be borne by the requesting party. If a tenant filed a request for the hearing, it is the tenant's burden to show a preponderance of the evidence that the date the violation first existed is earlier than the date of the first inspection, as documented in a public record or any other record that may be verified by the Hearing Examiner. The rent abatement start date will be the only issue addressed at the hearing unless the landlord has also filed a request for a hearing. If the landlord filed a request for a hearing, the tenant(s) shall have the burden of proving to a reasonable certainty by the greater weight of the credible evidence, i.e. by the preponderance of the evidence that the landlord failed to correct, (a) rent impairing violation(s) by the due date in an order of the Building Inspection Division or Public Health Madison and Dane County. It is the landlord's burden to show by the preponderance of the evidence that any rent impairing violations were negligently or willfully caused by the tenant or the tenant's guests or that the tenant's refusal to allow entry prevented the landlord from making the corrections in a timely manner. Thereafter, the tenant has the burden to show that any such refusal was reasonable under the circumstances. Either party may present additional evidence on the nature, extent and seriousness of violations, the length of time conditions existed and the extent to which the tenant was deprived of the full use of the rented premises, to assist in determining the rent abatement start date and the percent of abatement which should be allowed.

4. Decision.

- a. If, on the evidence at the hearing, the Rent Abatement Hearing Examiner finds that the landlord failed to comply with an order of the Building Inspection Division or Public Health Madison and Dane County to correct by the original due date a "rent impairing" violation as that term is defined in Sec. 32.04(4)(b), the Hearing Examiner shall dismiss the landlord's contested claims and order that rent shall be abated retroactive to the date of the initial inspection or an earlier date if proven by the tenant in order to effectuate the purpose of this Ordinance and to provide fair and equitable compensation to the tenant(s) for the diminished value of the rented premises due to the landlord's continued violation of the City of Madison's building/housing codes. Any such abatement shall be established in accordance with the Schedule of Rent Impairing Violations in Sec. 32.04(4)(d). In setting the exact percentage of abatement the

Hearing Examiner shall consider the nature, extent and seriousness of the particular condition(s), the total number of rent impairing violations at issue, the length of time the condition(s) existed and the extent to which the condition(s) deprive the tenant(s) of full use of the rented premises. If the Hearing Examiner finds that the landlord's failure to comply with the order of the Building Inspection Division or Public Health Madison and Dane County by the due date was caused by factors wholly outside the landlord's control and if the Hearing Examiner further finds that the landlord has taken affirmative steps to minimize the impact of the uncorrected rent-impairing condition(s) on the tenant(s), any sums reasonably expended by the landlord in that regard should be considered in setting the percentage of abatement and may operate to reduce the final abatement percentage below the minimum percentage listed for the item(s) in the Schedule of Rent Impairing Violations in Sec. 32.04(4)(d). The Hearing Examiner shall not authorize rent abatement for any condition(s) found to be caused either negligently or willfully by the tenant or his/her guests, nor shall abatement be ordered for any period of time after the tenant has unreasonably refused entry to the landlord for the purpose of correcting the condition(s) giving rise to the violation(s).

- b. If, after hearing, the Hearing Examiner finds that the landlord did not fail to comply with an order of the Building Inspection Division or Public Health Madison and Dane County to correct a rent impairing violation by the due date, that the Building Inspection Division's order to grant rent abatement was in error or that the rent impairing violations were caused by the tenant or the tenant's guests or that the tenant unreasonably refused entry for the purpose of correcting a rent impairing violation, the Hearing Examiner shall enter an order ~~denying the request for authorization to abate rent~~ vacating or modifying the earlier order to grant rent abatement for any items negligently or willfully caused by the tenant or guests of the tenant or for any items which remained uncorrected due to the tenant's unreasonable refusal to allow entry for repair purposes. Where the landlord has received an Official Notice of code violations requiring correction within seventy-two (72) hours or less, a refusal by the tenant to allow entry after reasonable notice of less than twenty-four (24) hours may be deemed an unreasonable refusal solely for the purpose of determining whether rent abatement shall be awarded for the violation which was the subject of the ~~Official Notice~~ Building Inspection Unit's Order of Abatement.
  - c. The decision and order of the Hearing Examiner shall contain written findings and shall be mailed to the parties within twenty (20) days of completion of the hearing or as soon thereafter as possible. The failure to issue and mail a decision within twenty (20) days shall neither deprive the Hearing Examiner of jurisdiction to render a final decision in the matter nor affect the validity thereof.
  - d. Except as provided in Sec. 32.04(5)(c) of the Madison General Ordinances relating to the rights of successor tenants, the holder of the landlord's interest in the premises at the time the decision and order of the Hearing Examiner is issued and the holder or holders of the landlord's interest during the period of time that the right to continuing abatement remains in effect are bound by the order and by the applicable provisions of this chapter relating to rent abatement.
- (f) Petition for Reconsideration. Within ten (10) days after service by mail of the decision of the hearing examiner, either party may file with the Building Inspection Division a written petition for reconsideration specifying in detail the

grounds for the relief sought. In addition, a hearing examiner may on ~~his/her~~ their own motion reconsider the decision or order a hearing on reconsideration.

1. Reconsideration will be granted only on the basis of:
    - a. A material error of fact or law or an error in the calculation of an award amount, or
    - b. for good cause, where the hearing examiner finds there are substantial grounds on which to reopen the hearing.
  2. Copies of the petition shall be served by first class mail by the petitioner on all parties, who may file replies within seven (7) days after service by mail of the petition.
  3. Within twenty-one (21) days of the filing of the petition, the hearing examiner shall enter an order denying reconsideration or an order granting reconsideration disposing of the petition without a hearing or shall order a rehearing, which shall be held within twenty (20) days. The failure to issue a decision within the above time period shall not deprive the Hearing Examiner of jurisdiction to render a decision on reconsideration or affect the validity thereof. If no order is entered within twenty-one (21) days of the filing of the petition, the petition shall be deemed denied.
  4. Upon rehearing, if any, proceedings shall conform as nearly as may be to Sec. 32.04(4)(e) et seq., relating to an original hearing.
  5. The filing of a petition for rehearing shall not suspend or delay the effective date of the original decision and order, and the order shall take effect on the date fixed by the hearing examiner and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.
- (g) Request for Modification. If, subsequent to a decision by a Hearing Examiner ordering rent abatement, substantial further deterioration or substantial improvement occurs in any rent impairing conditions which were the subject of the original order, the applicant, landlord or any successor tenant may request modification of the rent abatement amount. Only one such request for modification may be made by each eligible individual, which request shall follow the procedures in Sec. 32.04(4)(e) et seq. relating to the original application.
- (h) Enforcement. Whenever, in the judgment of the Landlord and Tenant Issues Committee, the judicial enforcement of the ordinance is necessary, the Committee shall in writing request the City Attorney to enforce the ordinance in the name of the City of Madison.
- (i) Appeal. All orders of the Rent Abatement Hearing Examiner shall be final administrative determinations and shall be subject to certiorari review in Dane County Circuit Court pursuant to the time limits and procedures set forth in Wis. Stat. § 68.13, which procedures are adopted and incorporated by reference. Such decisions are not reviewable under Sec. 9.49, MGO. Any party to the proceeding may seek review thereof within thirty (30) days of receipt of the final determination of the Hearing Examiner. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding before the Hearing Examiner, with said notice to be sent by first class mail to each party's last known address.

The institution of the proceeding for judicial review shall not stay the decision and order of the Hearing Examiner; however, the reviewing court may order a stay upon such terms as it deems proper.”

4. Subdivision (a) of Subsection (5) entitled “Successor Tenant” of Section 32.04 “Rent Abatement” of the Madison General Ordinances is amended as follows:

“(a) A successor tenant is entitled to abate rent pursuant to ~~the an~~ order of a rent abatement ~~hearing examiner~~ issued in accordance with this Chapter, provided that at the time the tenancy commences there exists an uncorrected rent impairing violation which was determined to be abateable or is in the process of being determined ~~by the hearing examiner~~ to be abateable.”

5. Subdivision (b) of Subsection (7) entitled “Rent Abatement and Code Violations Disclosure” of Section 32.04 “Rent Abatement” of the Madison General Ordinances is amended as follows:

“(b) A copy of any Hearing Examiner decision and order and any Order of rent abatement of the Building Inspection Division which affects the subject rental unit or any common areas of the subject rental building.”