

32.04(4)(e) - RENT ABATEMENT PROCEDURE

2. Rent Abatement Hearing Examiner.
 - a. The Rent Abatement Hearing Examiner shall have the authority to conduct hearings on requests for 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.

(Sec. 32.04(4)(e)2. Am. by Ord. 10,227, 3-29-91)

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. In the 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. 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 percent of abatement which should be allowed. (Am. by Ord. 10,875, 3-31-94; ORD-08-00109, 10-7-08; ORD-09-00147, 11-6-09; ORD-12-00076, 6-20-12)
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 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 order that rent be abated retroactive to the date of the initial inspection 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 Section 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 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). (Am. by Ord. 11,339, 8-25-95; ORD-08-00109, 10-7-08)

- b. If, after hearing, the Hearing Examiner finds that the landlord did not fail to comply with an order of the Building Inspection Division to correct a rent impairing violation by the due date 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 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. (Am. by Ord. 10,875, 3-31-94; ORD-08-00109, 10-7-08)
 - 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. (Am. by Ord. 9444, 3-25-88)
 - 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. (Cr. by Ord. 10,018, 5-14-90)
- (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 own motion reconsider the decision or order a hearing on reconsideration. (Am. by ORD-08-000109, 10-7-08)

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. (R. by ORD-10-00114, 12-8-10)

(Am. by Ord. 10,990, 10-10-94; ORD-08-00109, 10-7-08)

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. (Am. by Ord. 10,990, 10-10-94)
4. Upon rehearing, if any, proceedings shall conform as nearly as may be to Section 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.

(Sec. 32.06(4)(f) Am. by Ord. 9752, Adopted 4-4-89)

(Sec. 32.04 Renumbered from former Sec. 32.06 by Ord. 12,533, 2-18-00)

- (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. (Am by Ord. 9752, Adopted 4-4-89)
- (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. (Renumbered from (g) to (h) by Ord. 9444, 3-25-88; ORD-12-00076, 6-20-12)
- (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.