

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

Date: May 19, 2011

**MEMORANDUM**

TO: Landlord and Tenant Issues Subcommittee

FROM: Assistant City Attorney Lana J. Mades

RE: Tenant and Landlord Rights and Responsibilities pamphlet

I have reviewed the pamphlet containing the revisions proposed by Ms. Konkel. I appreciate Ms. Konkel's attention to this matter, and am grateful for the time she took to put her wealth of institutional memory and Common council experience to constructive use by catching a few items that I overlooked in my initial review.

Given that the prior pamphlet was previously approved by the housing committee, I believed for simplicity's sake that it was appropriate to retain as much of the form and language of the prior pamphlet as possible. The majority of the changes submitted by Ms. Konkel are revisions to form, rather than substance. As such, I don't take issue with the majority of her re-writes. However, there are several things that should be revised in her draft.

Using the paginated copy of Ms. Konkel's proposed pamphlet that includes her underline and strike-out changes, I highlighted the areas that should be changed. (I also highlighted these areas in Ms. Konkel's final draft, however, because the contents were reordered and don't have page numbers, the page numbers below refer to the version with the visible edits.)

These changes should be as follows:

Page 1: Under Rental Laws and Regulations, I suggest that the reference to Dane County Ordinances Chapter 31 should be removed. If the purpose of this pamphlet is to advise tenants regarding fair housing enforcement within the City of Madison, the County Ordinances are not practically applicable. When municipal ordinances are as strong or stronger than county ordinances (such is the case with Fair Housing) it is the policy of the Corporation Counsel's office to defer to the municipality for prosecution. Given this policy, and the fact that there are differences between the City and County Ordinances, inclusion of the County Ordinances would only create potential confusion for the reader.

Page 2: Under Application Process/Discrimination, I also suggest that the reference to DCO 31.02 should be removed (for reasons stated above), and the reference to MGO

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32.12(7) could remain, as it also prohibits discrimination for refusal to disclose a social security number.

Page 2: The next paragraph relating to denial of housing due to income should remain as originally written. The ordinance requires that evidence of an “actual ability to pay the rental amount” means the ability show BOTH current ability to pay a comparable income-to-rent ratio AND having paid a comparable rent over the last 2 years. Ms. Konkel’s revision mistakenly changes the “and” to an “or”.

Page 2: In the last paragraph, the added language, if included, should read, “The landlord cannot hold your earnest money for more than three business days unless you agree in writing...”

Page 3: Regarding receipts, if amended from the original, the second paragraph should read, “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.”

Page 4: Under the Breaking a Lease section, regarding mitigation, the line should read, “The landlord must make reasonable efforts to find a new tenant.” This language follows the ordinance, which does not equate to taking “the same or similar actions to find a replacement.” For example, I once rented out a house. I found a renter by making its availability known to my bowling team. If my tenant had broken the lease, it would not be reasonable to expect that the only efforts I would have to take would be to verbally advertise the unit to my bowling team.

Page 4: The last paragraph relating to foreclosures, if included, should read as follows: “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.” Wis. Stats. 846.35 should also be cited as a reference. Ms. Konkel’s version doesn’t account for the fact that the remedies are different depending on whether the foreclosure began before or after the lease agreement was entered.

Page 5: At the top of the page, the Federal Foreclosure Act extends until 2014, not 2012.

Page 5: The last paragraph should begin as follows, “Before accepting any earnest money or entering into a rental agreement, the landlord must disclose all of the following conditions affecting habitability;”... There is no requirement that landlords disclose absolutely all conditions that may affect habitability, just all of those that are listed.

Page 6: Remove the last line regarding foreclosure notice, as it is redundant. If the Committee wishes to include the foreclosure information in this section also, a citation to Wis. Stats. 846.35 needs to be added.

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Page 9: Correct the typo in the last line, changing “form” to “from”.

Page 11: Under Late Fees, change the first line to “Late fees cannot be charged, except as specifically provided under the rental agreement.” This is in keeping with the language of the code, which does not mandate written rental agreements.

Page 11: The last citation regarding late fees should include ATCP 134.09(8)(b) and (c)

Please let me know if I can be of any more assistance.

Sincerely,

Lana J. Mades  
Assistant City Attorney