

Tenant and Landlord Rights and Responsibilities Pamphlet

Rental Laws and Regulations

This document provides information about rights and responsibilities for tenants and landlords in the City of Madison. The numbers throughout the text refer to statutes, regulations or ordinances that are the source of the information and are listed below. This is not legal advice. Citations are for guidance and may not apply to your situation. If you have a specific legal question, you should consult an attorney.

Rental Laws & Regulations References

Wisconsin Statutes, (Wis. Stats.)

Chapter 704 (Tenant/Landlord)

Chapter 710 (Mobile Homes)

Chapter 799 (Small Claims)

Department of Agriculture, Trade and Consumer Protection Regulations (ATCP), Chapter 134 (Residential Rental) & Chapter 125 (Mobile Homes)

Madison General Ordinances (MGO)

Chapter 32 (Tenant/Landlord)

Dane County Ordinances (DCO)

Chapter 21 (Housing Discrimination)

General Tips for Avoiding Rental Problems

Keep a rental file which includes the lease, addendums, check-in/check-out forms, copies of letters/emails/texts to and from your landlord, housing inspection reports, notices to enter, and any documentation you have of repairs or security deposit problems.

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 your landlord when a problem arises.

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

If the landlord denies an application, they must give the tenant written reasons for the denial by the end of the third day after denial, unless the tenant has indicated on the application that they do not wish to receive a written explanation. **MGO 32.08(5)**

A landlord may not deny you housing because of your sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income (including Section 8), less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, student status, refusal to disclose your social security number to the landlord, inclusion in a domestic partnership, status as a victim of domestic violence, genetic identity, citizenship status or arrest or conviction record (exceptions: convictions for offenses requiring sex offender registration and convictions related to tenancy, some time limits may apply, check the ordinance for further explanation). **MGO 39.03(4)**

A landlord may also not deny you housing based solely on your income if you can provide evidence of your ability to pay. **MGO 32.12(7)**

You cannot be denied housing because you have applied for or currently receive Section 8, and your lease cannot be terminated early because you start receiving Section 8 assistance in the middle of your tenancy. **MGO 32.12(14), (15), & 39.03(4)**

Application Fees

If you pay an application fee (deposit, or earnest money) and your application is rejected or you withdraw the application before approval, the landlord must return the money at the end of the next business day. The landlord cannot use your earnest money for more than three business days unless you agree in writing to a longer time period not to exceed 21 days. If your application is approved, the money should be returned or applied to rent or the security deposit. If your application is approved, but you do 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, Wis. Stat. 704.29**

Copies of Rental Agreements & Receipts

You must be allowed to inspect the rental agreements and any rules and regulations that apply before you are asked to sign the agreement or pay

any fines, and you must be given a copy at the time of the agreement. **MGO 32.06(1), ATCP 134.03(1)** The landlord is required to provide receipts for the earnest money, security deposits and for any rent payments made in cash. If the 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.

MGO 32.06(3), 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.

MGO 32.09(1), (2), ATCP 134.07(1)(2)

Rental Agreements Written rental agreements (often referred to as a lease). Once signed, 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.

Joint and Several Liability. 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. This is called “joint and severable liability”.

Be careful in your roommate choices, you can be held responsible for their lease violations.

Other Types of Rental Agreements

Oral Agreements. These are legal if for one year or less, but you may have trouble enforcing the terms of an oral agreement unless you have proof of the agreement. Write a letter to the landlord with your understanding of the agreement if you have trouble getting it in writing. Make sure to keep a copy. **Wis. Stat. 704.03(1)**

Periodic agreements (commonly referred to as a “month-to-month” lease) are those where the rental agreement doesn’t specify beginning or end dates and with the “period” being the time interval between the rent payments. i.e. 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 (for month to month tenants at least 28 days) prior to the next time rent is due. If you intend to move out and have a month-to-month lease, you must provide at least 28 days written notice to terminate the agreement.

Wis. Stat. 704.01(2), 704.19(3), 704.21(2)

Subletting

Most leases require the permission of the landlord prior to subletting. If you sublet part of your apartment, or the entire apartment, you are still responsible for all terms of the original agreement, unless all parties (including the landlord), agree in writing to other terms. Sublet agreements should always be put in writing. **Wis. Stat. 704.09(1)**

Breaking a Lease

If you need to break your lease, and choose not to sublet, the landlord is responsible for finding a new tenant if you stop paying your rent. 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, you will be responsible for the rent owed until a new tenant is found. **Wis. Stat. 704.29**

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. Stat. 704.35(1), (2), & 846.35**

Illegal Rental Agreement Clauses

The lease cannot:

Require you to pay the landlord’s attorney and legal fees. However, a judge may order you to pay these fees after a trial. **MGO 32.11(3), ATCP 134.08(3)**

Allow your landlord to go to court as your representative and admit your guilt in the landlord’s dispute with you. **MGO 32.11(4), ATCP 134.08(4)**

Require you to pay rent before the date it is regularly due. **MGO 32.11(2), ATCP 134.08(2)**

Waive 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), ATCP 134.08(7)**

Authorize eviction other than by a judicial eviction procedure. **MGO 32.11(1), ATCP 134.08(1)**

Relieve the landlord from liability from property damage or personal injury caused by negligent acts or omissions of the landlord. **MGO 32.11(5), ATCP 134.08(5)**

Require you to accept liability for personal injury arising from causes clearly beyond your control as a tenant. **MGO 32.11(6), ATCP 134.08(6)**

Contain a provision that, if enforced, would violate the law. **MGO 32.11(8)**

Require you to pay the cost of carpet cleaning or shampooing unless there is unusual damage beyond “normal wear and tear”. **MGO 32.11(9)**

Required Landlord Disclosures

A lease agreement 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 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 you within 10 business days if there is a change in the owner or other person authorized to accept legal papers and notices, the name of the person who collects rent, manages or maintains the premises. **MGO 32.08(1), ATCP 134.04(1)**

Buildings of three units or more must have emergency contact information posted in a readily accessible conspicuous place. **MGO 27.04(2)(k)**

Before accepting any earnest money or entering into a rental agreement, the landlord must disclose all of the conditions affecting habitability; whether the apartment lacks hot/cold running water; has heating equipment that isn’t safe or can’t maintain heat at least 67 degrees year-round; lacks electricity or has an unsafe electrical system; has plumbing and sewage systems not in good working condition; has any other conditions that constitute a substantial health or safety hazard. These conditions must be disclosed before the landlord accepts money or enters into a rental agreement. **MGO 32.08(2), ATCP 134.04(2)**

The landlord must disclose outstanding code violations for which the landlord has actual notice, and must provide copies of any official notices regarding outstanding code violations, copies of rent abatement decisions affecting the unit or common areas, the occupancy limits, the zoning code’s family definition and any off-street parking requirements. The landlord shall advise the prospective tenant in writing of the successor tenant’s right to abate rent at the time the lease is signed. **MGO 32.04(7), 32.08(2), ATCP 134.04(2)** The landlord must disclose which utilities the tenant is responsible for. If the utilities are not separately metered the landlord must disclose how it is determined how much each tenant pays for utilities. **ATCP 134.04, MGO 32.08(2)(b)**

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 your residences must have a doorbell or buzzer system to alert you when you 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. Both the landlord and tenant must sign a document relating to the installation, operation and maintenance of smoke alarms, and the landlord must provide safety information to tenants. **MGO 34.907, 32.06(4)**

Check-In and Check-Out Forms

The landlord must provide you with a Check-in/Check-out form before you move in. The landlord must give no less than seven (7) days after moving in to note anything that was dirty, damaged, broken or missing when you moved in. Return the completed form to the landlord. If you want items repaired, make a separate request. If the landlord failed to provide you with a Check-in form at the start of the tenancy, or fails to provide a Check-out form at the end, they cannot withhold money for the damages or cleaning from your security deposit when you leave. The landlord must inform you that you may request a written list and/or photographs taken of the physical damage charged to the previous tenant’s security deposit. **MGO 32.07(5), MGO 32.07(6), ATCP 134.06(1)**

Tenant’s Right to Privacy & Exclusive

Possession Your landlord may not:

Change the locks on your apartment as a means of forcing you to move or to limit your access to the premises. **MGO 32.05(1)(a), ATCP 134.09(7)**

Confiscate any of your property unless they have a lien that you agreed to in a “non-standard rental provision”. **MGO 32.05(1)(c), MGO 32.12(3), ATCP 134.09(4)**

Enter your apartment without either your permission on a case by case basis or giving you 24 hours notice, including showing the apartment and for general repairs. Emergencies are an exception to this rule. **MGO 32.05(1)(d)**

Show the apartment for re-rental until ¼ of the lease term has passed, unless you have given written consent or your lease is less than 9 months or a summons and complaint for eviction has been filed. **MGO 32.12(8)**

Lease the apartment to future renters before ¼ of the lease term has passed, unless they have notified you of an earlier date in a non-standard rental provision form. **MGO 32.19(9)**

A landlord may regulate guests by stating a guest policy in the lease, but may not prohibit all guests. **MGO 32.05(1)(g)**

A landlord cannot give notice to show your apartment that covers more than three (3) consecutive days or more than three (3) hours a day and must note the specific times of entry. **MGO 32.05(1)(e)**

A landlord must knock and identify themselves before entering your apartment. **MGO 32.05(1)(f), ATCP 134.09(2)(d)**

Repairs

If repairs are needed, contact your landlord and give them a reasonable time to fix the problem. If they do not fix the problem, call the Building Inspector at (608) 266-4551.

If your landlord fails to repair or properly maintain your apartment or fails to comply with an order of the Building Inspection Division, you may be entitled to abate/reduce part of your rent. DO NOT withhold rent for repair problems without first contacting the Building Inspection or one or more of the agencies listed in this brochure for advice or assistance. **MGO 32.04, Wis. Stat. 704.07(4)**

Self-Help Repairs

On October 17, 2006, the City Council adopted an ordinance that will permit a tenant to have repairs made to their living unit, if the building owner has failed to comply with orders from the Neighborhood Preservation and Inspection Division of the Department of Planning and Community & Economic Development. The tenant must give notice to the landlord that they intend to use these self-help procedures. Qualified professionals, (as) required by law, must do repairs and the cost of repairs may be deducted from rent. This self-help repair procedure is in addition to rent abatement.

Rent Abatement

If your landlord fails to repair or properly maintain your apartment, or fails to comply with an order of the Inspection Unit you may be entitled to abate (reduce) part of your rent. Do not do this without calling either the Inspection Unit or an attorney. **MGO 32.04, Wis. Stat. 704.07(4)**

Retaliation

A landlord cannot evict you or threaten to do so, because you have contacted the Building Inspection Division, asserted a right under state or local law, filed a complaint with Consumer Protection or Building Inspection, started a lawsuit or joined a tenant's union, neighborhood watch or neighborhood association. Actions by the landlord are presumed retaliatory if taken within 6 months of a tenant taking one or more of these actions, unless the landlord can prove otherwise. **MGO 32.15, Wis. Stat. 704.45, ATCP 134.09(5)**

Late Fees

Late fees cannot be charged, except as specifically provided under the rental agreement. **ATCP 134.09(8)(a)**

A landlord cannot require you to pay late fees of more than 5% of a month's rent. **MGO 32.12(11)**

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)**

The Legal Process of Eviction

Five-Day Quit or Pay.

This notice means you have violated the lease and have five (5) days to either fix the problem (e.g. pay the rent) or move out. If you fix the problem, the landlord cannot take further action.

14-Day Termination Notice. If you have two or more similar lease violations the landlord can give this type of notice. It means the landlord is terminating your right to live in the apartment. With a 14-day notice you have no right to correct the problem but are expected to leave.

The first step in the eviction process is for the landlord to give you written notice of the lease violation. The notices will vary depending on your type of lease, the type of violation and previous violation notices you 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 you get one of these notices contact the landlord right away and try to fix the problem. **Wis. Stat. 704.17**

Eviction in Small Claims Court.

Your landlord cannot force you to leave the apartment without an eviction order from a judge. **ATCP 134.08(1), ATCP 134.09(7).**

You have the right to appear in court and contest the eviction notice. The landlord must prove to the court that you have violated the lease and that they are entitled to evict you. After the court action, the Sheriff must execute a Writ of Restitution (eviction) to terminate the tenancy.

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 by Madison General Ordinances and Wisconsin law. Madison Ordinances also prohibit a landlord from threatening to take any of these actions. **ATCP 134.09(5), (7), MGO 32.12(5)**

If you are evicted by a judge, or if a default judgment is issued because you did not appear in court, the Sheriff is the only person who can remove you from your unit. The Sheriff will give you a date and time to be out by or they will remove. This forced removal can be very costly and you can be held responsible for all the costs of moving and storing your property as well as addition unpaid rent if you get evicted. The landlord has the duty to minimize these costs by trying to re-rent the apartment. **Wis. Stat. 704.29, 799.44**

Lease Expiration & Automatic Renewal

Your lease may have an automatic renewal clause; however, your landlord cannot enforce such a clause unless they give you a separate written notice of the pending automatic renewal or extension. You must be given this notice at least 15 days, but not more than 30 days before its stated effective date. **ATCP 134.09(3), Wis. Stat. 704.15, MGO 32.12(2)**

Staying beyond the expiration date.

If you "hold over", or stay beyond the expiration date of a valid termination notice or expiration of a lease, the landlord may sue you in court for damages. A judge may order you to pay a minimum of double the daily rent to the landlord for each day you stay in the apartment after the notice to vacate or expiration of your lease.

Wis. Stat. 704.25(1), 704.27

Security Deposits

The security deposit cannot exceed one month's rent. **MGO 32.07(2)(b)**

If your security deposit exceeds one-half month's rent, you are due simple interest (rent credit) at the rate set by the Department of Financial Institutions, Division of Banking from the day it is paid until it is returned to you. This rate changes on a yearly basis. (www.cityofmadison.com/BI/WIFDIIntRate2011.pdf) **MGO 32.07(3)**

Landlord cannot increase or institute a security deposit during the term of the lease or with a new, renewed or amended lease with the original tenants. **MGO 32.07(2)(b)**

Your security deposit or partial deposit with a written itemized statement showing the specific reasons for any deductions (including receipts, estimates for repairs and wages and hours worked) must be mailed within 21 days of surrendering the premises. **MGO 32.07(7), ATCP 134.06(2)(a), (4)**

If your full security deposit is not returned the landlord must include with the itemized statement a notice that the tenant will be provided a copy of photos documenting the damage if requested by the tenant within 30 days. **MGO 32.07(7)**

If you move out early, and if you want your security deposit back within the 21 days of the date you move out, then you need to notify the landlord in writing of that date. If you don't notify the landlord, they can return your deposit up to 21 days after the end of the lease. **ATCP 134.06(2)(b)**

Landlord can't hold security deposits for both the primary tenant and someone subletting from the tenant, unless the total is less than one month's rent. **MGO 32.07(2)(d)**

Routine Painting or carpet cleaning, if there is no unusual damage caused by tenant abuse, **cannot** be deducted from the security deposit **MGO 32.07(14), ATCP 134.06(3)(c)**

Cashing a check for partial payment does not mean you waive your rights to seek full amount owed. **MGO 32.07(7)(d), ATCP 134.06(2)(e)**

Remember to provide a forwarding address for your security deposit. **ATCP 134.06(5)**

Tenant and Landlord Resources

The Department of Agriculture, Trade and Consumer Protection

Statewide Consumer Protection

Hotline 1-800-422-7128

Web: <http://datcp.state.wi.us>

The Tenant Resource Center

1202 Williamson St., Suite A, Madison, WI 53703

257-0006 Rental Rights & Responsibilities

242-7406 Housing Lists & Eviction Prevention

257-2799 Housing Meditation Service

Email: asktrc@tenantresourcecenter.org

Web: <http://www.tenantresourcecenter.org>

The Madison Equal Opportunities Commission (Housing Discrimination)

City-County Building, 210 Martin Luther King Jr.

Blvd., Madison, WI 53703 266-4910

<http://www.cityofmadison.com/dcr/eo.cfm>

Fair Housing Center of Greater Madison

600 Williamson Street, Suite L4, Madison WI

53703 257-0853, 1-877-647-3247 complaint intake

<http://www.fairhousingwisconsin.com/serv04.htm>

Student Tenant Education & Mediation

625 Langdon St., Madison, WI 53703

826-6226

E-mail: stemmadison@gmail.com

Web: www.stemmadison.com

WI Front Door

<http://www.wifrontdoorhousing.org>

A database including a comprehensive list of affordable housing for low and moderate income households in Wisconsin.

Apartment Association of South Central WI

702 N. High Point Rd., Suite 203, Madison, WI 53717

826-6226

E-mail: customerservice@aascw.org

Web: <http://www.aascw.org>

Inspection Unit of the City of Madison

Madison Municipal Building, 215 Martin Luther King Jr. Blvd., Ste. LL-100, Madison WI 53703

266-4551 (Ask for a Housing Inspector)

<http://cityofmadison.com/bi/bihome.html>

City of Madison Police Department:

Non-Emergency

City-County Building, 211 S. Carroll St., Room GR22, Madison WI 53703 255-2345

www.cityofmadison.com/police

City of Madison Fire Department

325 W. Johnson St., Madison, WI 53703

266-4420 (Non-Emergency)

Web: www.cityofmadison.com/fire

Dane County Small Claims Court: For information on the mechanics of filing a small claims suit.

Clerk of Courts, Rm. 1000, 215 South Hamilton St. Madison WI 53703 266-4311

<http://www.countyofdane.com/court/prepare/smallCLaim.aspx>

Website for brochure:

www.cityofmadison.com/BI/bihome.html