

# Wisconsin Consumer Protection Laws

## Landlord-Tenant Practices

### ***The Landlord-Tenant Relationship***

Wisconsin Statutes chapter 704 spells out the general responsibilities of landlords and tenants. Chapter 704 addresses the following:

#### **Rental Agreement**

The rental agreement establishes the terms of tenancy, except as provided by law. A rental agreement must be in writing if it is for a definite term of more than one year. A rental agreement remains in effect until it expires or is properly terminated according to chapter 704.

#### **Types of Tenancy**

Chapter 704 recognizes 3 different types of tenancy. The type of tenancy affects the legal rights of the landlord and tenant. The 3 types of tenancy are:

- A ***“lease”*** is an *oral* or *written* agreement for a *definite term*, such as one year. The lease terminates itself at the end of that term, unless the parties agree to renew or extend.
- A ***“periodic tenancy,”*** such as a month-to-month or week-to-week tenancy, has no definite termination date. A “periodic tenancy” continues indefinitely, with the tenant paying rent on a *regular periodic basis*, until the landlord or tenant terminates the tenancy. The rental agreement may or may not be in writing.
- A ***“tenancy at will”*** exists when a tenant occupies the premises with the landlord’s consent, but there is no *lease* or *periodic tenancy*. A “tenancy at will” continues until the landlord or tenant terminates it.

#### **Terminating a Periodic Tenancy**

A landlord or tenant may terminate a month-to-month or other *periodic tenancy* by giving a proper termination notice to the other party. The same procedure applies to a *tenancy at will*. Special requirements apply to mobile home park tenancies (see Wisconsin Statutes section 710.15 and Wisconsin Administrative Code chapter ATCP 125).

- Either party may terminate at any time, with or without “cause.” The termination notice need not specify a reason for termination. By contrast, a party must have

legally adequate “cause” to terminate a *lease* before the end of the lease period (see below).

- A party must give the termination notice in writing, at least 28 days before the termination date. If the tenant pays rent on a shorter periodic basis, such as weekly, the notice need only precede the termination date by the length of the rent-paying period.
- The termination date must coincide with the end of a rent-paying period.
- A party may terminate on shorter notice for legally adequate “cause” (see below).

### **Failure to Pay Rent: Terminating Tenancy for Nonpayment of Rent**

If a tenant fails to pay rent when due under a lease or other tenancy, the landlord may do any of the following:

- Give the tenant a written notice to pay within 5 days or vacate. If the tenant fails to pay within the 5-day period, the tenancy is terminated.
- Give the tenant a 14-day written notice terminating the tenancy, with no opportunity to cure the default. The landlord may not use this option unless one of the following applies:
  - The tenant is a month-to-month tenant, and is still in default when the landlord gives the 14-day notice terminating tenancy.
  - The tenant has a lease for one year or less, and defaults for a second time within one year after a prior default for which the landlord gave notice.

A landlord may recover unpaid rent from a defaulting tenant:

- If there is a *lease*, the tenant may be liable for rent for the remainder of the lease term. But the landlord must minimize the rent loss (and hence the tenant’s obligation), by making a reasonable effort to re-rent the premises. The landlord may recover the net rent loss, plus the reasonable cost to re-rent the premises.
- The landlord may deduct, from the tenant’s security deposit, the net rent loss for which the tenant is legally responsible. The landlord may also go to court to recover that loss.

## **Tenant Damage to Premises: Terminating Tenancy for Tenant Damage or Breach**

A landlord may terminate a lease or other tenancy if the tenant damages the premises or violates the rental agreement:

- ***Periodic tenancy.*** If a month-to-month or week-to-week tenant negligently damages the premises or violates the rental agreement (other than by failing to pay rent), the landlord may give the tenant a 14-day written notice terminating the tenancy. The landlord need not give the tenant an opportunity to cure the violation.
- ***Lease.*** If a tenant under a lease (for a term of one year or less) damages the premises or violates the lease, the landlord may terminate the tenancy as follows:
  - The landlord may give the tenant a written notice to cure the violation or vacate the premises within 5 days. The tenancy is terminated if the tenant fails to take reasonable steps to cure the violation within 5 days.
  - If there is a repeat violation within one year, the landlord may give the tenant a 14-day written notice terminating the tenancy, with no opportunity to cure the violation.
  - If a local law enforcement agency gives a landlord written notice that a tenant has caused a public nuisance on the rental premises, the landlord may terminate the tenancy on 5 days written notice.

## **“Untenantable” Premises**

A tenant may terminate a lease or rental agreement if either of the following occurs:

- The premises become “untenantable” because of damage by fire, water or other casualty.
- The landlord fails to comply with his or her maintenance obligations, and the violation materially affects the tenant’s health or safety.

In these cases, the tenant may move out without paying rent for the remainder of the rental term *unless* the landlord promptly repairs the premises or corrects the violation.

- Even if the landlord repairs the problem, the tenant may move out without paying further rent if the repair imposes an undue hardship on the tenant.
- If the tenant continues to occupy, rent abates to the extent that the tenant is deprived of full normal use of the premises.

- A tenant may not completely withhold rent while continuing to occupy the premises. However, some local housing codes may allow tenants to pay rent to an “escrow” account until the landlord makes the repairs.

### **Illegal Termination by Landlord: Illegal Termination**

A landlord may not terminate a lease or other tenancy in violation of applicable housing discrimination laws. Nor may a landlord terminate because a tenant has done any of the following:

- Reported a housing code violation.
- Joined or attempted to organize a tenants’ association.
- Asserted a right specifically guaranteed to tenants under state or local law.

### ***Landlord’s Maintenance Responsibilities***

A landlord must do all the following:

- Keep in reasonable repair those portions of the premises that the landlord controls.
- Keep equipment, such as heat, water, elevator and air conditioning, in reasonable repair if all the following apply:
  - The landlord controls the equipment.
  - The equipment is necessary to provide services that the landlord has expressly or implicitly agreed to furnish.
- Make all necessary structural repairs.
- Repair or replace furnished plumbing, electrical wiring, machinery or equipment that is no longer in reasonable working condition. This does not apply to repairs that the tenant can perform at a cost that is small in relation to the rent. A local housing code may change this allocation of maintenance responsibilities.
- Comply with applicable local housing codes.

### **Tenant’s Maintenance Responsibilities**

- If a tenant negligently damages the rental premises, the tenant must repair the damage. But the landlord may elect to do the repair and charge the tenant for the reasonable cost.
- A tenant must keep furnished plumbing, electrical wiring, machinery and equipment in reasonable working order if the tenant can do so at a cost that is minor in relation to

the rent. A local housing code may change this allocation of maintenance responsibilities.

- A tenant must comply with applicable local housing codes.

### ***Use and Possession of Premises***

Unless there is a separately negotiated agreement to the contrary:

- The tenant has a right to exclusive possession of the premises for the duration of the rental agreement, as long as the tenant does not default on rent payments.
- After giving advance notice to the tenant, the landlord may at reasonable times inspect the premises, make repairs, and show the premises to prospective tenants or purchasers. Under Wisconsin Administrative Code chapter ATCP 134, the landlord must give the tenant at least 12 hours advance notice unless the tenant, upon being notified of a proposed entry, consents to an earlier entry.
- If the tenant is absent from the premises and the landlord reasonably believes that entry is necessary to preserve or protect the premises, the landlord may enter without notice and with such force as appears necessary.

A tenant may not:

- Remodel or alter the premises without the landlord's consent.
- Use the premises for illegal purposes.
- Unreasonably interfere with other occupants' use of the same building or group of buildings.

### ***Subleasing***

A tenant under a *lease* may sublease the premises unless the lease expressly restricts the tenant's power to do so. Most other tenants, such as month-to-month tenants, must get the landlord's permission to assign their tenancy to others. The original tenant remains liable for all of the tenant's obligations under the rental agreement, unless the landlord agrees otherwise.

### ***Tenant's Personal Property***

If a tenant vacates the premises and leaves personal property, the landlord may do any of the following:

- Store the property on or off the premises. The landlord has a lien against the property for the actual and reasonable costs of removal and storage. The landlord must notify the tenant within 10 days after any storage charges begin.

- Notify the tenant that the landlord will sell or dispose of the property if the tenant does not claim it. If the tenant does not claim the property within 30 days, the landlord may sell or dispose of the property. The landlord must give the sale proceeds to the tenant if the tenant claims them within 60 days after the sale. The landlord may deduct the reasonable costs of storage and disposal.
- Store the property without charge and return it to the tenant.