

## Landlord tenant guide – 2014

State law provides a legal framework for the relationship between landlords and tenants.

Many disputes between landlords and tenants could be avoided if both parties better understood their legal rights and responsibilities.

This guide answers commonly asked questions in simple language. It is not intended to be a comprehensive guide or a substitute for legal advice.

This guide is intended to help landlords and tenants avoid common problems, or to resolve them when they do occur.

### **Section I: Brief Overview**

#### **Things you should know before renting**

##### **Landlords:**

A landlord must disclose the following information to a prospective tenant:

- Housing code violations they know about, but have not yet corrected and presents a significant threat to health or safety;
- Whether a tenant is required to pay utilities;
- How utility charges will be divided, if the dwelling unit is not individually metered.

Rental agreements do not have to be in writing. However, if the rental agreement is in writing, the landlord must let the tenants read it before they decide to rent. Then the landlord must give the tenant a copy of the written rental agreement.

If the landlord requires the tenant to pay an earnest money deposit (which includes "application fees") with the rental application, the landlord has three

business days after accepting the deposit to accept the tenant or return the earnest money deposit. A prospective tenant and landlord can agree to a longer period to consider the application. This agreement must be in writing and cannot be for more than 21 days after the landlord first accepted the earnest money.

If the landlord rejects the rental application, the landlord must return the entire earnest money deposit to the applicant by the end of the next business day after rejecting the application. If an applicant decides not to rent after the landlord accepts their application, the landlord may withhold actual costs or damages from the deposit.

A landlord may charge a prospective tenant the actual cost, up to \$20, to obtain a consumer credit report on the prospective tenant if the report comes from a national consumer reporting agency. This provision does not allow a landlord to charge a tenant for credit reports from credit information "resellers." The landlord must notify the tenant of this charge before requesting the report, give the tenant a copy of the report, and allow the tenant to provide their own report if it is less than 30 days old.

##### **Tenants:**

A tenant has the right to inspect the unit before they rent it.

Before a tenant commences their occupancy of the dwelling unit, the landlord must provide the tenant with an information check-in sheet that the tenant may use to make comments about the condition of the premises.

The tenant has seven days from the first rental date to complete the check-in sheet and return it to the landlord. The tenant should make sure that any pre-existing defects or damages to the unit are noted on the check-in sheet before they return it to the landlord.

To protect their security deposit, the tenant should make a copy of the completed check-in sheet before returning it to the landlord. This check-in sheet will help avoid disputes over damages, when the tenant leaves.

The landlord is not required to provide a check-in sheet if the tenant is renewing the lease or if the rental is for a plot of ground on which a manufactured housing unit is placed.

If a tenant pays a security deposit, the tenant may request a list of damages or defects for which the landlord withheld money from the previous tenant's security deposit.

## **Responsibilities of landlords and tenants**

### **Landlords:**

At the start of a tenancy, the landlord must give tenants the names and addresses of: (1) the person who collects or receives rent and (2) the person who manages and maintains the premises. The landlord must also give tenants the name and address (in Wisconsin) where the tenant can deliver any legal papers or notices required by the rental agreement.

The landlord is responsible for making any repairs necessary to comply with local housing codes and to keep the premises safe. If the landlord refuses to repair major building defects, the tenant may report the defects to the local building or health inspector. If the tenant makes such a report, the landlord may not retaliate by evicting the tenant.

A landlord has the right to inspect, repair, and show the premises at reasonable times. Generally, the landlord must give the tenant at least 12-hours advance notice before he or she may enter a dwelling unit. The landlord may enter with less notice in the case of an emergency or if the tenant agrees to a shorter notice. The landlord must knock or ring the doorbell before entering and must identify himself or herself upon request.

### **Q&A...**

#### **Question:**

Can a landlord raise the rent of a month-to-month tenant if they give the tenant a written notice at least 28 days before the next rent due date? For example, the landlord tells the tenant on March 25 that the rent will increase beginning May 1.

#### **Answer:**

Yes, the landlord can raise the rent of a month-to-month tenant if they give the tenant a written notice at least 28 days before the next rent due date. If the tenant is renting month to month, there is not a lease to prevent the landlord from increasing the rent. **There is no state law limiting the amount of a rent increase.**

If the tenant has a lease – for example, a six-month or one-year lease – the landlord may not increase the rent during the lease term, unless the lease specifically states otherwise.

### **Tenants:**

Unless otherwise agreed, the tenant is usually responsible for routine minor repairs. The tenant also must meet any maintenance and sanitation standards required by local housing codes.

A tenant is financially responsible for any damages, including infestations by insects or other pests caused by acts or inactions of the tenant.

## **Terminating a tenancy**

If there is no written lease and a tenant rents on a month-to-month basis: The landlord may terminate the rental agreement by giving the tenant a written termination notice at least 28 days before the next rent due date.

The tenant may terminate the rental agreement by giving the landlord a written termination notice at least 28 days before the next rent due date, unless they agreed to give a longer notice (that is, more than 28 days) in their rental agreement. The tenant may serve the written notice in person or by certified or registered mail.

If a tenant has a lease, the lease usually ends automatically at the end of the lease period, unless the lease states otherwise.

Some longer term leases include an "automatic renewal" provision. That is, the lease automatically renews for another term, unless the tenant tells the landlord they do not want to renew the lease. The landlord must "remind" the tenant of this provision by giving the tenant a written notice at least 15 to 30 days before the last day the tenant is able to give notice to the landlord that they are leaving. If the landlord does not give the tenant this written notice, the landlord may not enforce the automatic renewal provision.

If the tenant paid a security deposit, the landlord must return it within 21 days after the termination date of the lease or when the landlord re-rents the premises. If tenant vacates the premises before the last day of the lease, the tenant must notify the landlord in writing that they have left. The tenant may have to pay the rent for the rest of the lease term, or at least until the landlord finds another suitable tenant. The landlord must make reasonable efforts to find a new tenant and minimize any rent losses.

The landlord may deduct money from the security deposit for unpaid rent, damages for which the tenant is responsible ("tenant damage, waste, or neglect"), and unpaid utility bills. However, the landlord may not deduct money from the security deposit for routine carpet cleaning or painting, unless the carpet or walls show "tenant damage, waste, or neglect."

If the landlord makes any deductions from the security deposit, the landlord must give the tenant a written statement itemizing the amounts withheld and why. State law does not require the landlord to pay interest on security deposits.

### **Contract with a minor**

The general rule in Wisconsin is that a contract with a minor is void or voidable, at the option of the minor, regardless of whether the minor is emancipated or not. The only exceptions to this general rule are contracts involving duties imposed by law.

The minor can void a contract by any act which clearly shows the minor's intentions to do so. No particular form or words are required.

The general rule in Wisconsin is that a minor who is unable to return a purchased item need not do so in order to void the contract. When the purchased item is used, depreciated, consumed, wasted or otherwise disposed of, the minor is not responsible for its value and the adult party who contracted with the minor must bear the loss.

### **Eviction**

A landlord may evict a tenant who does not pay their rent, pays only part of their rent, or pays the rent late (even one day late). A landlord may also evict a tenant who breaks the rules or terms of the rental agreement or causes damage to the property. Also, a landlord who receives written notice from a law enforcement agency that the dwelling unit has been

declared a nuisance under Wisconsin Statutes sections 823.113(1) or (1m)(b) may evict the tenant.

1. A month-to-month tenant may be given either a 5-day written notice or a 14-day written notice of termination.
  - 5-Day Notice. This notice gives the tenant five days to either pay the rent or move out. If the tenant pays the rent within the five days, the tenant can stay and the tenancy continues.
  - 14-Day Notice. This notice states that the tenancy has ended because the tenant failed to pay the rent, broke the rental agreement, or damaged the property. Now the tenant has 14 days to leave. (This notice does not give the tenant a chance to pay the rent and stay in the rental unit.)
2. For a tenant with a lease if a landlord does not receive the rent on time, believes the tenant has broken the rental agreement or caused property damage, the landlord must give the tenant a 5-day written notice.
  - Non-payment of rent: If the tenant pays the rent within five days, the tenant stays and the tenancy continues.

However, within the next 12 months, if the tenant fails to pay the rent again, then the landlord may give the tenant a 14-day termination notice for failure to pay rent. The landlord does not have to give the tenant another chance to pay the rent to continue the tenancy.

- Other violations of the lease agreement: If a tenant receives a 5-day notice for breaking the rental agreement, the tenant may stay in the rental unit, if the tenant makes a correction and complies with the rental agreement.

However, within the next 12 months, if the tenant breaks any rules or causes any property damage, the landlord may give the tenant a final 14-day termination notice. This notice will say how the tenant broke the rental agreement or what damage the tenant caused, or is responsible for.

If a tenant refuses to leave the premises after receiving the proper notice, the landlord may start an eviction action in Small Claims Court. A tenant has the right to appear in court to contest the eviction. If the tenant fails to appear in court, the landlord will automatically obtain the eviction order. The landlord may not confiscate personal

belongings or use force to remove tenants from the rental unit until the judge orders an eviction.

However, if the court decides that the tenants wrongfully stayed in the rental unit, the court can order the tenants to pay the landlord twice the amount of rent owed (prorated on a daily basis) for each day the tenants stayed in the rental unit unlawfully.

### **Foreclosure**

If a tenant suspects that their rental property is in foreclosure or is going into foreclosure, the tenant should continue to make their rental payments as required by the rental agreement unless the tenant is otherwise directed by the court or by the agent handling the foreclosure.

A tenant can determine whether their rental property is in foreclosure by contacting the Clerk of Court for their county. A tenant can also check on the Internet at the Wisconsin Circuit Court access site, [wcca.wicourts.gov](http://wcca.wicourts.gov). If a tenant finds that their rental property is in foreclosure, a tenant can contact the party foreclosing to determine how the foreclosure might affect their rental agreement.

## **Section II: Analysis of the “Residential Rental Practices” rules**

**(Wisconsin Administrative Code, Chapter ATCP 134)**

**Commonly known as the "Landlord-Tenant" rules**

### **What living arrangements are covered by the rules?**

The Residential Rental Practices Rules apply to business practices related to the rental of most residential dwelling units in this state.

[NOTE: Manufactured home community operator-tenant relations are regulated by these rules and also by Wisconsin Administrative Code ch. ATCP 125 "Manufactured Home Communities – Fair Trade Practices." The Department of Agriculture, Trade and Consumer Protection (DATCP) administer both sets of rules.]

The Residential Rental Practices rules do not cover the following kinds of living arrangements:

- When a person lives in premises operated by a public or private institution and the person lives there to receive medical, educational, counseling, religious, or similar services. For example, the rules do not apply to residences at hospitals, nursing homes, or university-owned dormitories.
- When a person lives in a hotel, motel, boarding house, rooming house, or similar lodging for less than 60 days and the person is traveling away from his/her permanent place of residence.
- When a person lives in premises owned and operated by the government or an agency of government. However, these rules do apply to federally subsidized rental housing if the housing is privately owned or operated (which includes HUD "Section 8" housing).
- When a member of a fraternal or social organization (for example, a fraternity or sorority) lives in premises operated by that organization. However, if the organization rents rooms to non-members, these rules do apply to those rental agreements.
- When a person does commercial agricultural work and lives on the premises where he or she is working.
- When a person operates and maintains the premises and the person lives on the premises free of charge as part of the employment arrangement. (An example of this is a "resident manager.")
- When a person lives in a dwelling unit that the person is in the process of buying under a contract of sale, also known as rent-to-own.

### **Analysis of the rules**

The Residential Rental Practices Rules seek to address the main problems between landlords and tenants in order to help stop the problems from developing. Generally, the rules reinforce existing statutory rights given to tenants and incorporate court decisions from landlord-tenant cases in Wisconsin. The following discussion analyzes the individual provisions of the rules.

## **ATCP 134.03**

### **Rental agreements and receipts**

#### **(1) Copies of rental agreements and rules; "Entering Into a Rental Agreement" (ATCP 134.03(1))**

If a rental agreement (usually called a "lease") or any of the landlord's rules or regulations are in writing, this section requires the landlord to give the tenant a chance to read them before the tenant signs the lease. This gives the tenant a chance to find out what all the rental terms and conditions are before deciding whether to rent from that landlord. The landlord and tenant must agree on the essential terms of the tenancy, such as the total rent, including any non-refundable fees, the amount of the security deposit and the specific dwelling unit the tenant will occupy.

Once the parties sign a written agreement, the tenant must receive a copy of the entire agreement.

The landlord also must give the tenant a receipt for any earnest money or security deposit the tenant pays in cash.

By approving an individual as a prospective tenant, a landlord does not necessarily enter into a rental agreement with that person until they agree on the essential terms of tenancy. (See Wisconsin Administrative Code section ATCP 134.02(10), definition of "Rental agreement" and the "Note.")

For example, when the landlord is considering a person's application for a number of vacancies, there is no "rental agreement" yet, because the tenant and landlord have not decided and agreed on:

- the specific apartment the tenant will rent,
- what the total rent will be,
- what charges, fees or penalties the tenant must pay in addition to the rent, and
- the tenant has not yet had a chance to review the lease and any non-standard rental provisions.

The rules do not require rental agreements to be in writing. Verbal rental agreements are traditional in many parts of the rental industry. Existing statutes allow verbal rental agreements.

#### **(2) Receipts for tenant payments (ATCP 134.03(2))**

The landlord is required to give the tenant a written receipt any time the landlord accepts an earnest money deposit, a security deposit, or rent paid in cash. If the tenant pays by check, the rules do not require the landlord to provide a receipt, unless the tenant asks for a receipt.

## **ATCP 134.04**

### **Disclosure requirements**

#### **(1) Identification of landlord or authorized agents (ATCP 134.04(1))**

In many disputes about building maintenance, tenants indicate that part of the problem is that the tenants are not able to contact the landlord about a pressing problem.

To help address these problems, this subsection requires the landlord to disclose, in writing, the name and address of the person or persons authorized to collect rent and the person or persons who manage and maintain the premises. The tenant must be able to contact these people relatively easily. In addition, the landlord must identify an owner of the premises or a person authorized to accept legal papers on behalf of the owner. The rule requires that this address (not a Post Office Box) be located within the State of Wisconsin, and that the landlord must provide notice of any change of the person's address within 10 business days of the change occurring.

These disclosure requirements do not apply to owner-occupied structures containing up to four dwelling units, since, in such cases, the landlord is living in the building and the tenant knows whom to contact.

#### **(2) Code violations and living conditions (ATCP 143.04(2))**

Local housing codes generally establish the standards which rental housing must meet. A landlord must maintain their rental properties under the requirements of local housing codes.

Local housing codes do not protect all rental housing in Wisconsin. Even in municipalities that have housing codes, individual rental units may not be inspected regularly.

### **(3) Utility charges; charges for water, heat and electricity (ATCP 143.04(3))**

Landlords often require tenants to pay the utility charges separate from the rent. Before deciding to rent a specific unit, it is important for a tenant to know whether or not the utility charges are included in the rent. A tenant needs this information so they can accurately determine the total cost of renting the unit.

Wisconsin Administrative Code, section ATCP 134.04(3), provides that the landlord must tell a prospective tenant if utility charges are not included in the rent. The tenant must receive this information before signing a lease or paying any money for an earnest money deposit or security deposit.

If utility charges are not included in the rent and individual dwelling units and common areas of the building are not separately metered, the landlord must tell the tenant how the costs for utility services will be allocated among the individual dwelling units.

### **ATCP 134.05 Earnest money deposits and credit check fees**

The term "earnest money deposit" means the money a prospective tenant gives a landlord so the landlord will temporarily "hold" a dwelling unit off the market or so the landlord will consider the person's application. The purpose of these deposits is to protect the landlord from possible costs or losses if the prospective tenant decides not to rent from the landlord. The rules do not prohibit earnest money deposits, nor do they set any limit on the maximum amount of the deposit.

#### **(1) Accepting earnest money deposits (ATCP 134.05(1))**

A landlord may not accept earnest money deposits until the landlord identifies the specific dwelling unit(s) for which the prospective tenant is being considered. (Note: Credit check fees are not "earnest money deposits".)

#### **(2) Returning earnest money deposits (ATCP 134.05(2))**

**(a)** When no lease agreement is made the landlord must return the full earnest money deposit to the applicant by the end of the first business day after:

The landlord rejects the tenant's application or refuses to enter into a rental agreement with the applicant.

The applicant withdraws their application before the landlord accepts or rejects it.

The landlord does not approve the rental application within three business days after taking the earnest money deposit. The landlord and applicant may agree, in writing, to a longer time for the landlord to consider the application, up to 21 days.

The landlord may return the earnest money deposit to the applicant by first-class mail or by delivering it to the applicant.

#### **(b) When a lease agreement is signed.**

If the landlord and tenant sign a lease, then the landlord must either apply the earnest money deposit to the rent, apply it to the security deposit, or return it to the tenant.

If the landlord returns less than the full amount of the earnest money deposit and the prospective tenant accepts the partial amount, the prospective tenant still has the right to claim the landlord owes him/her the full amount of the deposit.

#### **(3) Withholding an earnest money deposit (ATCP 134.05(3))**

If the landlord approves the person to be a tenant, but the person decides not to sign the lease, the landlord may withhold from the earnest money deposit for lost rent and advertising costs actually incurred due to the tenant's failure to rent the premises.

However, if the landlord significantly changed the rental terms previously discussed with the tenant and that is why the tenant withdrew their application, the landlord may not withhold money from the earnest money deposit.

If the landlord withholds money from the earnest money deposit for "lost rent," the landlord must make reasonable efforts to re-rent the premises to "mitigate damages."

#### **(4) Credit check fees (ATCP 134.05(4))**

A landlord may charge a prospective tenant the actual cost, up to twenty dollars (\$20) for a "consumer credit report." (The term "consumer

credit report" is defined in the federal Fair Credit Reporting Act, Title 15 USC 1681a(d) of the United States Code.) This allows the landlord to check the creditworthiness of the prospective tenant.

In order for the landlord to charge for a credit report, the landlord must:

- Notify the tenant of the charge before requesting the report.
- Give the tenant a copy of the report.
- Obtain the report from a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis".

This means that if a landlord requests a credit report from one of the current "big three" national credit reporting agencies (TransUnion, Experian, or Equifax), the landlord may charge the prospective tenant the actual cost of that report, up to \$20. The rule does not allow landlords to charge applicants for credit reports obtained from local or regional consumer information databases, credit brokers, resellers, criminal background checks, reference checks, and sources of other personal information not contained in one of the three listed national credit repositories.

If the tenant presents a copy of a consumer credit report that is less than 30 days old, the landlord may not charge the tenant for a credit check. If the landlord wishes to obtain a more recent report, then the landlord must pay for the report himself/herself and cannot charge the tenant for that report.

## **ATCP 134.06 Security deposits**

Most Wisconsin landlords require a security deposit at the beginning of a tenancy to protect themselves from tenant damage or default.

### **(1) Check-In procedures; pre-existing damages (ATCP 134.06(1))**

When the landlord requires a security deposit, the rules establish certain basic elements of a "check-in" procedure. First, the tenant must have at least seven days to inspect and document any preexisting conditions. This seven day period gives tenants at least one weekend to make an inspection.

Second, the landlord must tell the tenant they have a right to receive a list or description of any physical damages for which the landlord withheld money from the previous tenant's security deposit prior to accepting a security deposit or converting an earnest money deposit to a security deposit. The landlord may require the prospective tenant to request this list of damages in writing.

If the tenant requests a list of previous damages, the landlord must provide the list within 30 days after receiving the request, or within seven days after charging the previous tenant for damages, whichever is later. The rules do not require the landlord to disclose the amount of the charges or the identity of the previous tenant. If the landlord repaired the damages, the landlord may note this on the list.

### **(2) Security deposit return; requirements (ATCP 134.06(2)(a))**

The rules provide that the landlord must deliver or mail the security deposit, less any amounts withheld, to the last known address of the tenant within 21 days after the end of the lease term. If the tenant leaves the dwelling unit before the end of the lease, the landlord still has 21 days after the end of the lease to return the security deposit unless the landlord re-rents the dwelling unit before the end of the lease. In that case, the landlord must return the security deposit within 21 days after the dwelling unit is re-rented.

Any rent payment that is more than one month's prepaid rent is considered to be a security deposit. Nothing in the rules prevents a landlord from collecting more than one month's rent as security. However, when the tenant surrenders the premises, the landlord must treat any rent prepayment in excess of one month's rent as a security deposit and must account for it as such.

If there are multiple tenants to a rental agreement and the landlord returns the security deposit by check or money order, the landlord shall make the check or money order payable to all the tenants who were parties to the rental agreement. Multiple tenants may designate in writing a specific person(s) to be the "payee" at any time during the rental agreement.

When a landlord returns less than the full security deposit and the tenant accepts this partial amount, this still does not prevent the tenant from claiming that the landlord owes the tenant more or all of the security deposit.

### **(3) Limitations on security deposit withholding (ATCP 134.06(3))**

- (a) Generally, the landlord may withhold money from the security deposit only for the following reasons:
- Tenant damage, waste or neglect of the premises;
  - Nonpayment of rent;
  - Nonpayment of actual amounts the tenant owes the landlord for utility services provided by the landlord,
  - Nonpayment of government utility charges for which the tenant is responsible but become the liability of the landlord if the tenant does not pay, and;
  - Nonpayment of manufactured home communities parking fees.
- (b) The rule allows landlords and tenants to mutually agree, in a "Nonstandard Rental Provision," to permit the landlord to withhold the security deposit for other reasons than those listed above with some exceptions.
- (c) Specifically, the landlord may not negotiate a "Nonstandard Rental Provision" with the tenant to withhold the security deposit for any costs related to "normal wear and tear." For example, the Wisconsin landlord tenant statute and residential rental practices rule prohibit routine across-the-board deductions from the security deposit for cleaning, painting, or carpet cleaning, that result from only "normal wear and tear."

### **Nonstandard rental provisions**

If the landlord wants to include any additional provisions to the rental agreement, the landlord and the prospective tenant must separately negotiate those provisions. Under the rules, a rental agreement may include the following provisions only if the landlord and tenant separately negotiate them and include them in a separate written document entitled, "Nonstandard Rental Provision":

1. Expanded landlord right of entry into the dwelling unit. (134.09(2)(c))
2. Authorized deductions from a tenant's security deposit. (134.06(3)(b))

### **Q&A...**

#### **Question:**

Can landlords use a "Nonstandard Rental Provision," for provisions other than security deposit deductions and expanded rights to enter the unit?

#### **Answer:**

No. Under the rule, a "Non-Standard Rental Agreement" only applies if it relates to withholding from the security deposit or the landlord's right of entry.

As far as the rule is concerned, any clause, no matter how it is titled or where it is placed, is considered the same as any other clause of the lease. For example, a clause that is prohibited under the rule is still prohibited even though the landlord may treat it as a "Non-Standard Rental Provision."

In any case, where a landlord presents a rental agreement that contains a Non-Standard Rental Provision, the landlord must specifically identify and discuss each nonstandard provision with the tenant before the tenant enters into any rental agreement. The tenant must sign or initial each nonstandard provision. If the tenant signs or initials a Non-Standard Rental Provision, then a court will presume that the landlord discussed each provision with the tenant and the tenant agreed to each provision before signing the form.

There may be more than one Non-Standard Rental Provision contained within a single document, and the document may be pre-printed. If there are multiple provisions contained within a single document, the tenant must sign or initial each provision contained within the document.

### **Q&A...**

#### **Question:**

Can a lease or "Non-Standard Rental Provision," include a provision about carpet cleaning?

#### **Answer:**

A lease may include a provision about carpet cleaning as long as it does not make the tenant responsible for damages, waste or neglect that the

tenant or the tenant's guests did not cause. For example, a provision about carpet cleaning may not require the tenant to pay for replacing a worn carpet that was worn before the tenant occupied the dwelling unit.

Landlords are cautioned to ensure that a lease and any advertising for a dwelling unit clearly disclose any non-refundable or "up-front" fees or costs as part of the total rent payable. Also, the landlord may not withhold payments due for cleaning due to normal wear and tear from the security deposit.

## Q&A...

### Question:

Can landlords require tenants to pay upfront "cleaning" or other fees or deposits, in addition to the security deposit?

### Answer:

Yes. A landlord can have an agreement that a tenant agrees to pay for carpet cleaning. However, any type of "up front" deposit or fee, including any refundable deposit or fee, in excess of one month's rent becomes part of the total security deposit and is subject to the limitations in Wisconsin Administrative Code ch. ATCP 134.06(3) for withholding from the security deposit. Although the landlord may withhold a security deposit for tenant "damage, waste or neglect," the landlord may not withhold a deposit for "normal wear and tear."

If a landlord withholds any part of the security deposit for routine cleaning or carpet cleaning that is related to "normal wear and tear" this violates Wisconsin Administrative Code ch. 134.06(3)(c). The landlord cannot deduct cleaning costs, painting costs or carpet cleaning costs from a security deposit unless there was tenant "damage, waste or neglect."

## (4) Security deposit withholding; statement of claims (ATCP 134.06(4))

If the landlord deducts any money from the security deposit, the landlord must give the tenant an itemized statement of accounting. This statement must have two entries for each individual deduction:

1. a description of the item and physical damages or other reason for the claim, and
2. the amount withheld as reasonable compensation for the claim.

This allows for discussion about whether or not the claim is valid and whether or not the charge for the item is valid. Failure to describe the damage, waste, or neglect that necessitated each charge makes it appear the charges are being withheld for normal wear and tear.

The rules prohibit a landlord from intentionally falsifying any security deposit claim.

## (5) Tenant failure to leave forwarding address (ATCP 134.06(5))

The rules require the landlord to mail the security deposit and/or an accounting for the security deposit to the tenant's last known address. This rule applies even if the last known address is the dwelling unit the tenant rented under the rental agreement. The landlord does not violate the rules if the postal service is unable to complete mail delivery. A tenant should notify the postal service and the landlord, or the landlord's agent, of their change of address as soon as possible to insure they receive their security deposit in a timely manner. However, if a tenant fails to leave a forwarding address, this does not affect the tenant's rights to demand that the landlord return more or all of the security deposit.

## ATCP 134.07 Promises to repair

Some people agree to rent a dwelling unit based upon the landlord's promises to make certain repairs or improvements to the premises. Such promises may unfairly induce a person to rent a dwelling unit. Although promises to repair may be binding on the landlord, they are difficult to enforce, especially when the promises are not in writing.

### (1) Specific date of completion required (ATCP 134.07(1))

For every "promise to repair," the landlord must specify the date or time period when the landlord will complete the repairs or improvements. This requirement applies to promises to clean, repair or improve any furnishings, facilities, or parts of the premises.

### (2) Initial promises must be in writing (ATCP 134.07(2))

If the landlord makes any promises to repair before the parties sign the initial rental agreement, the landlord must put the promises

to repair in writing. The landlord must give the tenant a copy of these promises. By requiring the landlord to put these promises to repair in writing, the landlord has increased accountability with respect to promises that directly affected the tenant's decision to enter into a rental agreement.

**(3) Repairs must be completed on time (ATCP 134.07(3))**

The landlord must complete the promised repairs or improvements within the time period stated in writing. The only excuses the rules "accept" for the landlord not completing the repairs on time are if:

- there is a labor stoppage,
- supplies are not available,
- there are unavoidable casualties, or
- there are other causes clearly beyond the landlord's control.

If something happens to delay the completion of the repairs, the landlord must tell the tenant what has happened that is beyond the landlord's control and give the tenant a new date when the repairs will be completed.

## **ATCP 134.08**

### **Prohibited rental agreement provisions**

Under the rules, rental agreements may not include any provision which:

- (1) Authorizes the landlord to evict or exclude the tenant from the premises,** unless the landlord has followed the statutory eviction process and has a court order. (ATCP 134.08(1))
- (2) Provides for the acceleration of rent payments or waives the landlord's obligation to mitigate damages in the event of tenant default.** If the tenant breaches or defaults on their lease, the landlord may not require the tenant to immediately pay for all future rent payments that the tenant is otherwise obligated to pay. Also, under the rule, the landlord is obligated to attempt to "mitigate the damages." In most cases, this means that the landlord must try to reduce the amount of rent the tenant is still obligated to pay by trying to re-rent the apartment. A rental agreement may not in any way try to waive the landlord's obligation to mitigate damages and re-rent the premises as required under Wisconsin Statutes, section 704.29. (ATCP 134.08(2))

**(3) Requires the tenant to agree to pay any attorney's fees or costs the landlord may incur in any legal action or dispute arising out of the rental agreement.** However, this does not prohibit the landlord or tenant from recovering attorney's fees and costs through a court proceeding or hearing. (ATCP 134.08(3))

**(4) Authorizes the landlord to "confess judgment" against the tenant.** A tenant "confesses judgment" in a lease when the lease contains a clause that says the tenant will "admit guilt" whenever certain disputes arise. For example, a clause in a lease may not require a tenant to admit that a rental payment was late and agree to pay for the penalty before the late payment occurs and before the tenant has a chance to dispute whether it was late. (ATCP 134.08(4))

**(5) Says the landlord is not liable for or responsible for any property damage or personal injury** caused by the landlord's negligent acts or omissions. (ATCP 134.08(5))

**(6) Says the tenant is liable for personal injuries arising from causes clearly outside the tenant's control,** or for property damage caused by natural disasters or persons other than the tenant, the tenant's guests, or persons the tenant has invited to the premises. (ATCP 134.08(6))

**(7) Waives any statutory or other legal obligation that requires the landlord to deliver the premises in a fit or habitable condition,** or maintain the premises during tenancy.

While tenants may be held responsible for some maintenance duties, tenants cannot legally give up their rights, such as the right to safe and habitable housing. (ATCP 134.08(7))

## **ATCP 134.09**

### **Prohibited practices**

**(1) Advertising or rental of condemned premises (ATCP 134.09(1))**

Landlords may not advertise or rent a premise that has been condemned for human habitation. If the premise is condemned or the landlord has received a notice of intent to do so, the landlord may not try to rent the premises. After the landlord completes the necessary repairs and

the premise complies with local building and safety ordinances, the landlord may advertise the premises for rent.

## **(2) Unauthorized Entry (ATCP 134.09(2))**

Landlord-tenant law provides that a tenant has the right to exclusive possession of the dwelling unit during the tenancy, unless the landlord and tenant have agreed to a Non-Standard Rental Provision that specifically authorizes the entry. Although the landlord has no general right to enter the dwelling unit without the tenant's permission, state law does authorize the landlord to enter the premises without advance approval under certain circumstances.

### **Advance Notice Required:**

If the entry is otherwise authorized, the landlord may enter the premises (1) after giving the tenant at least 12 hours advance notice and (2) during reasonable hours, to do any of the following:

- Inspect the premises;
- make repairs;
- show the premises to prospective tenants or purchasers; or
- for reasons authorized by a Non-Standard Rental Provision.

### **Advance Notice Not Required:**

A landlord may enter the premises without advance notice if:

- The tenant requests or consents, in advance, to the time the landlord plans to enter the dwelling unit;
- a health or safety emergency exists;
- the tenant is absent and the landlord reasonably believes that entry is necessary to preserve or protect the premises;
- the landlord enters in accordance with a Non-Standard Rental Provision and the provision allows for an entry without advanced notice.

These provisions are an important statement of public policy. Their purpose is to safeguard tenants' basic rights to privacy and freedom from unannounced intrusions, while at the same time protecting the landlord's legitimate property interests.

In any case, if a landlord enters a dwelling unit while it is rented, the landlord must first announce his or her presence to any persons who may be present in the dwelling unit. That is, the landlord must knock on the door or ring the doorbell. If anyone is present when the landlord enters, the landlord must identify himself/herself before entering.

## **(3) Automatic lease renewal without notice (ATCP 134.09(3))**

State statutes currently provide that an "automatic renewal" clause in a lease is not enforceable against a tenant unless the landlord gives a written reminder of the clause to the tenant 15 to 30 days before the tenant's last chance to notify the landlord whether they intend to stay or leave. Some landlords try to automatically renew a lease without giving the tenant the required notice. Landlords should review the language in Wisconsin Statutes s. 704.15 for the notice requirements.

A tenant who does not know about the notice requirements may feel pressured into renewing their lease. The statute makes the automatic renewal clause unenforceable, unless the landlord gave the tenant the required "reminder."

### **Example:**

The lease has an automatic renewal clause. The lease will expire on December 31, 2014. The lease provides that the tenant must give the landlord 60 days' notice if the tenant does not plan to renew the lease.

### **Example Notice Requirements:**

- The tenant must notify the landlord by November 1, 2014, whether they plan to renew their lease.
- The landlord must give the tenant a written notice, reminding the tenant of the automatic renewal clause, between October 1, 2014 and October 15, 2014.

## **(4) Confiscating personal property (ATCP 134.09(4))**

The rules prohibit landlords from taking a tenant's personal property or preventing a tenant from taking possession of their personal property, unless authorized by Wisconsin Statutes section 704.05(5).

## **(5) Retaliatory eviction (ATCP 134.09(5))**

A landlord may not increase rent, decrease services (such as water, electricity or heat), refuse to renew a lease, bring an action to evict or threaten to do any of these things, if it is caused by the landlord's desire to retaliate against the tenant because the tenant has:

Reported in good faith a building or housing code violation to government authorities;

complained to the landlord about a violation of Wisconsin Statutes ch. 704 which describes the duties of the landlord;

complained to the landlord about violations of the local housing code; or

asserted or attempted to assert his/her legal rights as a tenant.

The tenant should always first notify the landlord of any violations to take advantage of the protection of this law.

## **(6) Failure to deliver possession (ATCP 134.09(6))**

A landlord must give the tenant access to the dwelling unit at the time agreed upon in the rental agreement. The only time it is permissible for the landlord not to "deliver possession" of the dwelling unit on the agreed date is when something happens which is beyond the landlord's control. For example, if the furnace for the dwelling unit suddenly quit working the night before the tenant is scheduled to move in and the water pipes freeze, the landlord might not be able to turn over possession of the dwelling unit the next day.

## **(7) Self-help eviction (ATCP 134.09(7))**

A landlord may not exclude, forcibly evict, or constructively evict a tenant from a dwelling unit unless the landlord follows the eviction procedures established by law (Wisconsin Statutes ch. 799). "Constructive eviction" includes, for example, when the landlord disconnects utility services, changes the locks, removes the doors from the dwelling unit, or harasses the tenants in other ways.

## **(8) Late rent fees and penalties (ATCP 134.09(8))**

A landlord may not charge a tenant a "late rent fee" or "late rent penalty," unless the rental agreement specifically provides for such a penalty.

If the tenant was late paying rent the previous month and gives the landlord a rent payment for the current month, the landlord must first apply that payment to any rent that is currently due before applying it to any past due rent or late fee charges.

Landlords may not charge tenants a fee or penalty for not paying a late rent fee or late fee penalty. For example, the tenant's rent of \$500 for April was late and the landlord charged the tenant a \$45 late rent fee. In May, the tenant paid the \$500 rent on time, but the tenant did not pay the \$45 late rent fee from April. In this situation, the landlord cannot deduct the \$45 April late fee "off the top", claim that the tenant only paid \$455 for May rent, and add another \$45 late fee for May.

## **(9) Misrepresentations (ATCP 134.09(9))**

The rule prohibits a landlord from making misrepresentations about the rental property or the rental agreement in order to get a prospective tenant to agree to rent from the landlord.

Under this rule, no landlord may:

- Misrepresent the location, characteristics or equivalency of dwelling units owned or offered by the landlord. For example, the landlord may not show a fancy "model" apartment and then rent a unit which is dirty or in poor repair.
- Misrepresent or fail to disclose the total amount of rent and other non-rent charges the tenant must pay. For example, a landlord may not advertise a unit for \$600 a month in the newspaper or on a sign and then charge a first month's rent which is more than \$600 or charge non-refundable fees which, when added to the rent, cause the total payment due in any month to exceed \$600. The highest amount payable during any rent paying period must be disclosed in any form of advertising.
- Fail to tell a prospective tenant about any non-rent charges that will increase the total amount the tenant must pay during their tenancy.
- Engage in "bait and switch" practices. For example, the landlord may not tell a prospective tenant that the landlord is considering the person for an apartment in an 8-plex on 25th Street when the landlord really plans to rent the person a smaller apartment in a very large apartment complex on 2nd Street.

## **ATCP 134.10**

### **Effect of rules on local ordinances**

The Residential Rental Practices rules may not change any of the rights or duties assigned to landlord and tenant in chapter 704 of the Wisconsin Statutes.

As to local government ordinances, the Residential Rental Practices rules do not directly conflict with the requirements of these rules. If there is a direct conflict between the Residential Rental Practices rules and a local ordinance such that, by complying with the ordinance a person would violate the rules, then the rules control. A landlord and tenant must comply with both the local ordinances and the Residential Rental Practices rules.

### **Penalties for violating the residential practice rules**

The department understands that most landlords comply with the rules voluntarily. When the department finds violations, it tries to obtain voluntary compliance from the appropriate party whenever possible. However, if enforcement action becomes necessary, violations of the rules may result in significant penalties. These penalties are part of section 100.26 of the Wisconsin Statutes. The department and the person who violated the rules will either mutually agree to a penalty amount or a court will ultimately decide what the penalty will be. These penalties also apply to other administrative rules the department administers, such as rules on auto repairs, home improvements, and telemarketing.

The actual penalties imposed by a court will depend on the seriousness of the violations and the damages or harm that resulted. The maximum penalty is a civil forfeiture up to \$10,000 for each violation. A district attorney may also bring criminal misdemeanor charges for violations of these rules which may result in a fine up to \$5,000 for each violation or a year in the county jail, or both. Of course, courts do not impose these maximum penalties for minor or technical violations.

Minimum statutory penalties are a civil forfeiture of \$100 for each violation or a criminal fine of \$25 for each violation. In addition to any other penalties, the court may issue an injunction telling the person not to violate the rules again in the future and may order the person who violated the rules to pay restitution to the victim. That is, the landlord must pay the tenant for any monetary losses suffered because of the violations.

The Department of Agriculture, Trade, and Consumer Protection investigates alleged violations of the Residential Rental Practices rules. If prosecution is necessary, the department works in cooperation with the Wisconsin Department of Justice, or the local District Attorney.

### **Private remedy for violations of the rules**

State law also allows anyone who suffers monetary losses because of violations of the Residential Rental Practices rules to file a lawsuit on their own in state court (usually small claims court) against the violator. In an individual lawsuit, the victim can recover from the violator up to twice the amount of their monetary "out-of-pocket" losses (or damages), plus costs including reasonable attorney's fees [Wisconsin Statutes section 100.20(5)]. How much a person actually recovers depends on whether the victim can satisfactorily prove to the court what monetary losses and damages are suffered. The exact amount the victim recovers is decided by the courts. Also, the amount of costs, including attorney fees, that the tenant may recover is limited to 3 (three) times the amount of the award for damages.

Parties may seek this remedy directly in court, without filing a complaint with the department or involving the department. However, the department's involvement can often assist in resolving your complaint. Your complaint assists the department in monitoring the business' practices to ensure they are following Wisconsin's Residential Rental Practices rules.

See the notes following Wisconsin Administrative Code ss. ATCP 134.05(3) and ATCP 134.06(2)(a) which references a decision issued by the Wisconsin Supreme Court for more information. This case, *Pierce v. Norwick*, 202 Wis. 2d 588 (1996), provides some guidance on what the courts look at in deciding how to award damages against a landlord who violated the rules in Wisconsin Administrative Code, chapter ATCP 134, regarding security deposits and earnest money deposits.

## **Additional information available**

Wisconsin Administrative Code, Chapter ATCP 134,  
Residential Rental Practices:

**[http://docs.legis.wisconsin.gov/code/  
admin\\_code/atcp/090/134.pdf](http://docs.legis.wisconsin.gov/code/admin_code/atcp/090/134.pdf)**

Wisconsin Administrative Code, Chapter ATCP 125,  
Manufactured Home Communities:

**[http://docs.legis.wisconsin.gov/code/  
admin\\_code/atcp/090/125.pdf](http://docs.legis.wisconsin.gov/code/admin_code/atcp/090/125.pdf)**

Wisconsin Statutes, Chapter 704, Landlord and  
Tenant:

**[http://docs.legis.wisconsin.gov/  
statutes/statutes/704.pdf](http://docs.legis.wisconsin.gov/statutes/statutes/704.pdf)**

Wisconsin Statutes, Chapter 799, Sections 799.40  
to 799.45, Evictions:

**[http://docs.legis.wisconsin.gov/  
statutes/statutes/799.pdf](http://docs.legis.wisconsin.gov/statutes/statutes/799.pdf)**

*Tenants' Rights & Responsibilities* - BCP fact sheet:

**[http://datcp.wi.gov/uploads/Consumer/  
pdf/LT-TenantsRights143.pdf](http://datcp.wi.gov/uploads/Consumer/pdf/LT-TenantsRights143.pdf)**

## **Contact us**

For more information or to file a complaint, visit  
our website or contact the Bureau of Consumer  
Protection.

**Bureau of Consumer Protection  
2811 Agriculture Drive  
PO Box 8911  
Madison WI 53708-8911**

**E-MAIL:  
DATCPHotline@wisconsin.gov**

**WEBSITE:  
datcp.wisconsin.gov**

**Toll-free in WI:  
(800) 422-7128**

**(608) 224-4976**

**FAX: (608) 224-4939**

**TTY: (608) 224-5058**