



Landlords' and Tenants' Rights and Responsibilities

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Wisconsin law establishes landlords' and tenants' rights and responsibilities relating to leasing, property maintenance, and rental payment, and identifies provisions that may render leases unenforceable. While much landlord-tenant law applies to both residential and nonresidential rental properties, this issue brief provides an overview of the rights and responsibilities that apply to residential properties.

TENANTS' EXCLUSIVE RIGHT OF POSSESSION AND LIMITATIONS ON USE

Unless a lease specifies otherwise, a residential tenant has an exclusive right to possession of the leased premises: generally, no one may enter the premises without the tenant's permission. However, with advance notice, and at reasonable times, a landlord may enter the premises to inspect or repair the property or to show the premises to prospective tenants or purchasers. If a tenant is absent from the premises, a landlord may also enter without notice, if the landlord reasonably believes that the entry is necessary to preserve or protect the premises. Tenants are entitled to peaceful enjoyment of the premises, which means freedom from excess noise or recurrent disturbances or disruptions. [ss. 704.05 (2) and 704.17(3m)(b), Stats.]

Tenants are generally prohibited from making physical changes, including decorating, removing, altering, or adding to, the premises or the structures on the premises, unless the lease specifies otherwise or the tenant obtains the landlord's prior consent. If a tenant installs any fixtures during his or her residency, the tenant is entitled to remove those fixtures if he or she either restores the premises to their original condition or pays the landlord to do so. [s. 704.05 (3) and (4), Stats.]

While a tenant generally has the right to use his or her premises in any manner, so long as the tenant is not causing damage to the premises or its structures, a tenant may not use the premises for any unlawful purpose, and may not interfere with the rights of other tenants to enjoy the property. Generally, if a tenant commits waste, causes damage to the premises, or otherwise breaches a condition of the lease, a landlord may notify the tenant that the tenant must either remedy the breach or leave the property¹.

However, a landlord may notify a tenant that the tenant must vacate the premises after five days if the landlord receives notice from a law enforcement agency that the tenant has engaged in, or allowed in the premises, certain drug- or gang-related criminal activity or harm or threats related to domestic violence, or the landlord receives notice that the tenant or a guest of the tenant has engaged in criminal activity that threatens another tenant's or the landlord's health, safety, or right to peaceful enjoyment of the property. [ss. 704.16 (3)(b) and 704.17 (1p)(c), (2)(c), (3)(b), and (3m)(b), Stats.]

LANDLORDS MUST MAINTAIN PROPERTY IN LIVABLE CONDITION

A residential landlord generally has a duty to keep the premises in a reasonable state of repair, to make all necessary structural repairs, and to comply with local housing code requirements. A landlord has a duty to disclose to a prospective tenant, before entering into a lease agreement, any building code or housing code violation that affects the tenant's housing unit or a common area used by tenants, and that presents a significant threat to the tenant's health or safety. If a prospective tenant agrees to rent based on a landlord's promise to make repairs before entering into a lease agreement, the landlord must provide the tenant with a written statement addressing each item to be cleaned, repaired, or otherwise improved and stating when the work will be completed. If a tenant causes damages to the property, including by an infestation of insects or other pests, due to his or her acts or failure to act, the landlord

may opt to make the necessary repairs, allow the tenant to make the necessary repairs, or hire another person to make the repairs. If the landlord makes the repairs or hires another person to do so, the tenant must reimburse the landlord for the costs.

If conditions in a rental premises are damaged to the point that a tenant's health or safety is affected or the tenant is unable to use part of the premises, the tenant is entitled to reduce the amount of rent proportionately to the conditions of the property. Under most circumstances, a tenant may not refuse to pay rent entirely, unless the conditions are so poor as to force the tenant to move out. Under the doctrine of "constructive eviction," a tenant may be excused from his or her obligation to pay rent for any period that the tenant is unable to live in the premises because of damage by fire, water, or other disaster, or because the landlord's failure to maintain the premises created conditions that were hazardous to the tenant's health. [s. DATCP 134.07; s. 704.07 (2), (3), and (4), Stats.]

LEASES ARE GENERALLY SEVERABLE; CERTAIN PROVISIONS ARE PROHIBITED

Provisions of a rental agreement are generally severable; that is, Wisconsin law allows certain provisions in a lease to be invalidated without invalidating the other provisions. [s. 704.02, Stats.]

However, under the statutes, certain provisions will not be severed from the agreement but, instead, will render the entire lease void and unenforceable. A provision will render an entire rental agreement void and unenforceable if it does any of the following:

- Allows a landlord to take certain retaliatory actions because a tenant has contacted an entity for law enforcement, health, or safety services.
- Authorizes the eviction or exclusion of a tenant from the premises other than by a process established in state statute.
- Provides for accelerated rent payments in the event of tenant default or breach of obligations under the rental agreement or otherwise waives the landlord's statutory obligation to mitigate damages.
- Requires a tenant to pay attorney fees or costs incurred by the landlord, except as required by court order.
- Authorizes a landlord to act on the tenant's behalf in an action arising under the rental agreement.
- States that a landlord is not liable for property damage or personal injury caused by a landlord's negligent acts or omissions.
- Imposes liability on a tenant for personal injury arising from causes clearly beyond the tenant's control or for property damage caused by natural disasters or persons other than the tenant or the tenant's guests or invitees.
- Waives a landlord's statutory or other legal obligations to deliver the premises in a habitable condition and maintain the premises.
- Allows a landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property, if the tenant, or someone who lawfully resides with the tenant, is the victim of that crime.
- Allows the landlord to terminate a tenancy for a crime committed in relation to the rental property if the rental agreement does not include a statutorily required notice relating to certain domestic abuse protections. [s. 704.44, Stats.]

¹ The time a landlord must grant for a tenant to remedy the breach depends on the length of the term of tenancy. Tenancies of one year or less, year-to-year, or month-to-month are allowed five days to remedy the breach or vacate the premises, although a landlord in a month-to-month lease may opt to simply notify the tenant that he must vacate the premises after 14 days, without allowing the tenant an opportunity to remedy the breach. Tenants with leases lasting longer than one year are granted 30 days to remedy or vacate. In tenancies of one year or less, year-to-year, or month-to-month, if the tenant commits a second breach within one year, the landlord may notify the tenant that he or she must vacate the premises after 14 days. [s. 704.17 (1p) (b), (2) (b), and (3) (a), Stats.]