



Tenant & Landlord Rights and Responsibilities

Madison General Ordinance 32.06(2)
Housing Committee Approval March 7, 2007

This booklet provides information about your rights and responsibilities as a tenant or landlord in Madison. The numbers throughout the text refer to statutes, regulations or ordinances that are the source of the specific piece of information. These are listed below. This pamphlet is not meant to be legal advice. If you have a specific legal question, you should consult an attorney. You may also check with one of the groups or agencies listed.

Rental Laws & Regulations References

Citations are for guidance and may not apply to your situation. Check with an attorney or one of the groups or agencies listed.

- ✓ Wisconsin Statutes, (Wis. Stats.) Chapter 704 (Tenant/Landlord)
- ✓ Wis. Stats., Chapter 799 (Small Claims)
- ✓ Department of Agriculture, Trade and Consumer Protection Regulations (ATCP), Chapter 134
- ✓ Madison General Ordinances (MGO), Chapter 32 (Tenant/Landlord)
- ✓ MGO, Chapter 27 (Minimum Housing Code)
- ✓ MGO, Chapter 3 (Relates to housing discrimination)

General Tips for Avoiding Rental Problems

- ✓ Keep a rental file. The file should include the lease, addendums, check-in/out forms, letters to and from your landlord, housing inspection reports, notices to enter, and any documentation you have of repairs or security deposit problems. Request a receipt for rent payments.
- ✓ Keep notes with dates and names of any contacts with the landlord regarding problems.
- ✓ Get 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.
- ✓ Maintain the apartment; keep it 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 for which you are responsible.

Application Process/Discrimination

- ✓ If the landlord denies an application, they must give the tenant written reasons for the denial, unless the tenant has indicated on the application that they do not wish to receive a written explanation. **MGO 32.08(5)**
- ✓ Provide accurate and complete information on your rental application. 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, arrest or conviction record within two years of conviction or release (except for offenses related to tenancy, such as violence to others, disturbing neighbors, damage to property, or two or more offenses related to the sale of drugs), less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, student status, or because you have declined to disclose your social security number to the landlord. **MGO 3.23**
- ✓ 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)**
- ✓ Your lease cannot be terminated prior to the end of a lease because you have applied for or receive Section 8. You cannot be denied the right to apply for housing because you have applied for Section 8. **MGO 32.12(13), (14), (15)**

Application Fees

If you pay an application fee (deposit, or earnest money) and your application is rejected, the landlord must return the money within three business days. The fee also must be returned to you if you withdraw the application prior to approval. If the application is approved, the money should be returned, 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. **ATCP 134.05, MGO 32.10**

Copies of Rental Agreements & Receipts

- ✓ You must be given copies of the rental agreements and any rules and regulations that apply before you are asked to sign the agreement or pay any fees. **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. **MGO 32.06(3), ATCP 134.03(2)**
- ✓ Any promise to clean or for repairs must be in writing with a copy of the signed promise given to the tenant. The document shall specify the date by which the work shall be completed. **MGO 32.09(1), ATCP 134.07(2)**

Rental Agreements

Written rental agreements (often referred to as a lease). Once signed, the lease binds all parties. Unlike some consumer contracts, there is no back-out period. The only way to modify a written lease agreement is if all parties agree to the changes. It is best to get that agreement in writing.

Joint and Several Liability. It is customary for leases to require that each resident is responsible for meeting the terms of the rental agreement even if the other residents do not do so.

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 since it is your word against the landlord.

Sec. 704.03(1) Wis. Stats.

Periodic agreements (Commonly referred to as a “month-to-month” lease). If your rental agreement doesn’t specify a fixed period, then you are a periodic tenant, with the period being the time between the rent payments. If you pay each month, this is the period of your agreement. Your right to occupy the apartment, as well as the amount of rent, can change after any period, if you are given 28 days notice prior to the next time rent is due. **Sec. 704.01(2), Wis. Stats.**

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. **Sec. 704.09(1), Wis. Stats.**

Illegal Rental Agreement Clauses

The lease cannot:

- ✓ Require you to pay the landlord’s attorney fees and costs if the landlord sues you. However, a judge may order you to pay for attorney fees (a maximum of \$300) and also pay court costs after the 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 to maintain the premises during the tenancy. **MGO 32.11(7), ATCP 134.08(7)**
- ✓ Require you to pay late fees of more than 5% of a month’s rent. **MGO 32.12(11)**

- ✓ 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 the tenant's control or for property damage caused by natural disasters or persons other than the tenant's guests or invitees. **MGO 32.11(6), ATCP 132.08(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 caused by tenant abuse. **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. **MGO 32.08(1), ATCP 134.04(1)**
- ✓ Buildings of three units or more must have emergency contact information posted in the hallway. **MGO 27.04(2)(k)**
- ✓ Conditions Affecting Habitability. Disclose whether the apartment: lacks hot/cold running water; has heating equipment that isn't safe or can't maintain heat at least 67° degrees; lacks electricity, or has an unsafe electrical system; has plumbing and sewage not in good working condition; has any other conditions that constitute a substantial health hazard. These conditions must be disclosed before the landlord accepts money or completes 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. **ATCP 134.02**

The landlord must also provide copies of any official notices regarding outstanding code violations, copies of rent abatement decisions, the occupancy limits, the City's family definition and the off-street parking requirements. If the apartment is under abatement, the landlord must give the tenant at the time of signing of the lease a written notice that the successor tenant has the right to continue to abate rent for code violations. **MGO 32.08(2)**

- ✓ The landlord shall disclose to a prospective tenant any Official Notice of outstanding violations and a copy of any Hearing Examiner's decision which effects the subject rental unit or common area. In addition, the landlord shall advise the prospective tenant in writing of the successor tenant's rights to abate. **MGO 32.04(7)**

Exterior Door Locks

If the building has two or more apartments that are accessed from a common area, the exterior door must be locked at all times, and your residence must have a doorbell or buzzer system to alert you when you have guests. All doors leading to basements, basement laundries and storage areas must also be locked at all times. Effective Date: July 5, 2005.

Sale of Property

Your rental agreement is not affected by a change of owners of the building. The landlord must notify you within 10 business days of a change of the owner or other person authorized to accept legal notices and demands on behalf of the landlord, or a change in the name of the person who collects rent, manages or maintains the premises. **MGO 2.08(1), ATCP 34.04(1)**

If you are a periodic (e.g. month-to-month) tenant, the new owner can ask you to leave and change any rental conditions with one month's (rental period) notice.

Check-In and Checkout Forms

The landlord must provide you with a Check-in/Check-out form before you move in. Complete the Check-in form within seven (7) days after moving in noting anything that was dirty, damaged, broken or missing when you moved in. Return the completed form to the landlord. If the landlord fails 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. **MGO 32.07(5), MGO 32.07(6)**

You may request a written list of physical damages charged to the previous tenant's security deposit. **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. **MGO 32.05(1)(a), ATCP 134.09(7)**
- ✓ Confiscate any of your property to cover late rent payment or damages. **MGO 32.05(1)(c), ATCP 134.09(4)**
- ✓ Enter your apartment without your permission 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)(e), ATCP 134.09(2)**
- ✓ Show the apartment for re-rental until 1/4 of the lease term has passed, unless you have given written consent. **MGO 32.12(8)**
- ✓ Seek to rent the apartment to future renters before 1/4 of the lease has passed, unless they have notified you of an earlier date in your lease. **MGO 32.19(9)**

A landlord may regulate guests, 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) days or more than three (3) hours a day. **MGO 32.05(1)(e)**

A landlord must knock and identify themselves before entering your apartment.
MGO 32.05(1)(f)

Rent Abatement

If your landlord fails to repair or properly maintain your apartment, or fails to comply with an order of the Neighborhood Preservation & Inspection Division, 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, Sec. 704.07(4), Wis. Stats.**

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.

Retaliation

A landlord cannot evict you or threaten to do so, because you have contacted the City Neighborhood Preservation & Inspection Division, asserted a right under state or local law or joined a tenant's union or association. **MGO 32.15, Sec. 704.45 Wis. Stats., ATCP 134.09(5)**

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. **Sec. 704.17(1)(a), (2)(a) Wis. Stats.**
- ✓ **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. **Sec. 704.17 Wis. Stats.**
- ✓ Tenants with leases for a specific amount of time must be given a five-day notice with the right to cure the first time they fail to pay rent, and the first time they have some other type of lease violation. For subsequent similar violations within one year, the landlord may choose which notice to again give the tenant. These notices must be served on the tenant in accordance with State law. **Sec. 704.17 Wis. Stats.**

- ✓ **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 can appear in court and contest the eviction and the landlord must prove that they are entitled to evict you before the Court will grant the landlord's request that you be evicted. After the court action, the Sheriff must execute a Writ of Restitution (eviction) to terminate the tenancy. **Sec. 799.44, Wis. Stats.**
- ✓ Efforts such as turning off the heat, electricity or water, by removing doors or other actions that make it impossible to live in the apartment are prohibited by Madison and Wisconsin law. **ATCP 134.09(5), (7), MGO 32.12(5)**
- ✓ Evicted tenants are responsible to pay rent until someone else moves in or until the end of the lease, whichever comes first. However, the landlord is required to make reasonable efforts to re-rent the apartment. **Sec. 704.29, Wis. Stats.**

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), Sec. 704.15, Wis. Stats., MGO 32.12(2)**
- ✓ **Staying beyond the expiration date.** While your landlord cannot force you to move without a court order, a judge may order you to pay damages to the landlord for any time you stay in the apartment after a notice to vacate or the expiration of your lease. The amount you will be assessed can be at least twice the rent for the period you stayed after notice to vacate. **Sec. 704.25(1), Wis. Stats., Sec. 704.27, Wis. Stats.**

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 (www.cityofmadison.com/BI/WIFDIIntRate2005.pdf) from the day it is paid until it is returned to you. The landlord must disclose the interest rate in your lease. **MGO 32.07(3)**
- ✓ Landlord cannot increase or institute a security deposit during the term of the lease. **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)**

- ✓ If the security deposit (which includes any pet deposit, key deposit or furniture deposit) is more than half of one month's rent, then the tenant is entitled to interest on the deposit when it is returned. **MGO 32.07(3)**
- ✓ If you move out early, and if you want your security deposit back within the 21 days, then you need to notify the landlord in writing, otherwise, wait until 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)**
- ✓ Items that **cannot** be deducted from security deposit: **MGO 32.07(14)**
 - ✓ Normal wear and tear
 - ✓ Washing windows
 - ✓ Shampooing carpets
 - ✓ Occasional repainting

Remember to provide a forwarding address for your security deposit.

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: trc@rso.wisc.edu
 Web: <http://trc.studentorg.wisc.edu>

The Madison Equal Opportunities Commission (Housing Discrimination)

City-County Building
 210 Martin Luther King Jr. Blvd.
 Madison, WI 53703
 266-4910
 Web: <http://www.ci.madison.wi.us/eoc>

Fair Housing Center of Greater Madison

600 Williamson Street, Suite L4
Madison WI 53703
257-0853, 1-877-647-3247 complaint intake line
Web: <http://www.fairhousingwisconsin.com/serv04.htm>

WI Front Door

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

<http://www.wifrontdoorhousing.org>

Apartment Association of South Central Wisconsin

702 North High Point Rd., Suite 203
Madison, WI 53717
826-6226
Web: <http://www.aascw.org>

Neighborhood Preservation & Inspection Division of the City of Madison

Madison Municipal Building
215 Martin Luther King Jr. Blvd., Suite LL100
Madison WI 53703
266-4551 (Ask for a Housing Inspector)
Web: <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
Web: www.cityofmadison.com/police/poldept.html

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

Clerk of Courts
Dane County Courthouse
215 S. Hamilton St., Room 1000
Madison WI 53703
266-4311
Web: <http://www.countyofdane/clkcort/smclaim.htm>

Website for brochure: <http://www.cityofmadison.com/BI/bihome.html>

M.G.O. 32.06(2)

Copies of this Brochure may be obtained from the Neighborhood Preservation & Inspection Division of the City of Madison at a price not to exceed the cost of production.