

More about Illegal Evictions

THE LANDLORD NEEDS A COURT ORDER TO REMOVE YOU FROM THE PREMISES. Your landlord can be prevented from trying to remove you illegally, and can be fined, or even sued for double damages, court costs and reasonable attorney fees (Wis. Stat. 704.95). (3/31/12)

For immediate help, call the sheriff. Document what happens and any costs you have related to the illegal eviction. To report and recover these costs, you will need to sue in small claims court. It may be helpful to call Consumer Protection at (800) 422-7128 or a private attorney. According to Wisconsin consumer protection law, the only legal method to remove a tenant is a judge's order in small claims court (ATCP 134.09(7)).

Suing for Illegal Evictions

2011 Wis. Act 143 indicates that **any violation of chapter 704 may be an unfair trade practice and therefore the tenant may be entitled to double damages, court costs and reasonable attorney fees. (3/31/12)**

"704.95 Practices regulated by the department of agriculture, trade and consumer protection. Practices in violation of this chapter may also constitute unfair methods of competition or unfair trade practices under s. 100.20."

This is in addition to the double damages, court costs and reasonable attorney fees that were allowed under DATCP 134. This means that **any violation of tenant-landlord law by the landlord could be entitled to double damages, court costs and reasonable attorney fees.**

NOTE: Once the landlord files in small claims court, possible violations of tenant rights is a violation of chapter 799 and not subject to the language above.

The Legal Eviction Process

The landlord must pay a filing fee and file at the county court. You should receive the summons from a sheriff or a civil process server at least 5 days before the joinder conference (also known as the "initial hearing" or "return date"). Technically, all adult tenants on the lease must be personally served with the notice of the court date. If the server cannot personally serve you, they must serve an adult in your household or a family member over 14 years old and they must inform them of the contents of the notice. If they can't use either of these methods, the summons and complaint may be published in the newspaper and mailed (Wis. Stat. 801.11).

You must appear in court or you will be evicted. You do not need to bring witnesses to a joinder conference, but be prepared to discuss your case at this time. The purpose of the conference is to find out if there will be a settlement (like a payment plan or move-out date), or if there will need to be a trial. It is important that if you make a payment agreement, it is reasonable schedule.

If you make an agreement and do not follow through, you may be evicted without returning to court. The landlord only has to file an affidavit (a sworn statement) with the court. Then the sheriff may evict you.

IF THIS HAPPENS IN ERROR: Immediately go to court and file a petition to reopen the case, then give a copy of the petition to the sheriff. This stops the eviction process and gives you a chance to prove you didn't violate the terms of the stipulation agreement.

If a settlement is not reached, either party can request the trial to be on a different date. Many return dates turn immediately from the initial hearing into a trial unless one of the parties asks for the trial to be on a different date (Wis. Stat. 799). At trial you should be prepared to present all evidence and witnesses. Check with your local clerk of courts to learn the procedure in your county.

What if I am evicted?

If you go to trial and lose, the judge will issue a written order called a *writ of restitution*. After the landlord gives the sheriff the writ, the sheriff has 10 business days to remove you from the apartment. Usually the sheriff will post a notice before removing you from the premises. Only the sheriff has the authority to post a notice and remove a tenant. To find out when/if your eviction is scheduled, call the sheriff. The tenant may contact the sheriff and attempt to arrange a move out date. If the sheriff removes you, your possessions will be moved to storage and you will have to pay reasonable moving and storage costs to retrieve them (but not back rent). **Landlords may try to use changes in the law due to 2011 Wis Act 143 to declare the tenant's property abandoned and sell for their own profit or throw out the tenant's property, but the proper method of removal of the property in an eviction is covered by Wis. Stat. 799.45.**

After an eviction, it may be very difficult to rent again. If you are evicted you may wish to contact the Tenant Resource Center, your county's human services, and First Call For Help by dialing 2-1-1 or (608) 246-4357 (in Dane County) for agencies that provide emergency rent, shelter, and other assistance.

After you are evicted and the landlord has had the chance to determine how much money you may owe, a rent and damages hearing will be held. At this hearing, a court commissioner or judge will determine the amount you owe. Make sure the court has your new address so that you receive a notice of this hearing! Otherwise, the landlord will win a default judgment. It is important to attend so that you can provide information that may minimize the amount of the judgment. For example, landlords cannot charge for time spent re-renting or for a re-rental processing fee. Landlords have an unwaivable duty to mitigate or minimize all re-rental costs. (Wis. Stat. 704.29). For more information contact the Tenant Resource Center. For legal advice, contact a housing attorney.

Important Numbers

Financial Assistance

Housing Help Desk (Dane County): (608) 242-7406
United Way First Call For Help (statewide): 2-1-1 (touchtone phone) OR (608) 246-4357 (cell phone)

Other Assistance

Housing Mediation Service (Dane County): (608) 257-2799
Legal Action of Wisconsin Intake Line: (800) 362-3904

Eviction Vocabulary

Cure: To remedy or take care of a lease violation.

Joinder conference: A pre-trial hearing in an eviction case where the landlord and tenant decide whether they will settle or go to trial. Sometimes this is called the "return date" or "initial hearing."

Mitigate damages: The landlord's legal duty to minimize lost rent and other re-rental costs after a tenant is evicted, by actively seeking a replacement tenant.

Rent and damages hearing: A hearing held after an eviction to determine how much money the evicted tenant owes the landlord for unpaid rent and other losses to the landlord.

Retaliation: When a landlord takes action against a tenant because the tenant was exercising or trying to exercise his or her rights as a tenant. This is illegal.

Serve: To formally give a person court papers that inform him or her that he or she is being sued.

Settlement: A mutual agreement to end a lawsuit.

Small claims court: The court where eviction cases are filed.

Stipulated dismissal: A settlement such as a payment plan or move out date which, if fulfilled by the defendant (tenant), dismisses the case.

Stipulation: A court-ordered agreement by both parties.

Summons and complaint: The formal court papers that order a person to appear in court and why.

Trial: The formal court proceeding in which the landlord and tenant(s) present evidence and witnesses to a judge or court commissioner, who then makes a decision about who should win the lawsuit.

Writ of restitution: A court order from a judge evicting the tenant and granting possession of the rental property to the landlord.

Last updated: 8/23/12

This program is funded by the following:



Special thanks to the **Dane County Bar Association** and **Area Agency on Aging of Dane County (Leck Grant)** for their generous support in updating these materials!

The **Tenant Resource Center** is a non-profit, membership organization dedicated to promoting positive relations between rental housing consumers and providers throughout Wisconsin. By providing information and referrals, education about rental rights and responsibilities, and access to conflict resolution, we empower the community to obtain and maintain quality affordable housing.



TENANT RESOURCE CENTER

Eviction

MAIN OFFICE

(Located in the Social Justice Center, Suite 102)

1202 Williamson Street, Madison, WI 53703

Monday – Friday, 9AM-6PM

Housing Questions: (608) 257-0006

Toll-Free: (877) 238-RENT (7368)

asktrc@tenantresourcecenter.org

En Español: (608) 237-8913

Hmoob: (608) 257-0143

Mediation: (608) 257-2799

Business: (608) 257-0143 | Fax: (608) 286-0804

CAMPUS OFFICE

(Located in the Student Activity Center, 3rd Floor)

333 East Campus Mall, Madison, WI 53703

Hours vary, please check the website!

Phone: (608) 561-3727

uw@tenantresourcecenter.org

HOUSING HELP DESK

(Located in the Dane County Job Center, Room 2)

1819 Aberg Avenue, Madison, WI 53704

Monday – Friday, 10AM-2PM

Phone: (608) 242-7406 | Fax: (608) 242-7490

hhd@tenantresourcecenter.org

Visit us at tenantresourcecenter.org!

Follow us on   and !

If you need an interpreter, materials in alternative formats, or other accommodations, call our administrative line at (608) 257-0143.

NOTE: 2011 Wisconsin Acts 108 and 143 (formerly SB 107 and SB 466) changed many laws. Act 108 (Dane County/Madison and Fitchburg) went into effect on 12/21/11 and Act 143 (statewide) went into effect on 3/31/12. These changes are indicated in **bold** and ~~strikethrough~~ and apply to leases signed **or** some events that happened after that date.

What is an eviction?

An eviction is a process landlords may begin when they believe a tenant has seriously violated the lease, and they want the tenant to fix the problem or leave the apartment. The process usually begins with a notice giving the tenant at least 5 days to remedy a violation. The process may eventually end up in small claims court with a judge deciding whether the tenant gets to stay (the case is either settled by agreement or dismissed) or whether the tenant will be removed from the apartment. It is important to remember that in Wisconsin, A TENANT CAN ONLY BE EVICTED BY A JUDGE (ATCP 134.09(7)).

How does the process begin?

First, the landlord should identify the tenant's violation of the lease. There are many things tenants do that may be undesirable, but if it's not a violation of the lease, the landlord cannot evict them for that reason. The eviction process begins when the landlord serves or gives the tenant a written notice under Wis. Stat. 704.17.

NOTE: A notice that your lease will not be renewed or a 28-day notice to end a month-to-month tenancy are "non-renewal notices," NOT eviction notices.

Types of Eviction Notices

The notice must be in writing (Wis. Stat. 704.17(4)) and include the date, the amount of rent due or the lease clause that the tenant has supposedly violated, the type of notice, and the right to cure the problem, if the tenant has one. There are several types of eviction notices.

NOTE: The time limit in the notice does not count the day it is served, Saturday, or Sunday (Wis. Stat. 801.15(1)(b)).

5-day Pay or Quit Notice: This is a warning that the tenant is late with rent. The landlord can only give this notice at a point when the rent is late. This notice can be cured. By law, the landlord has to allow tenants at least 5 days to do one of the following:

1. Pay all overdue rent,
2. Sign a payment plan with the landlord (if they're willing to make one), or
3. Move out (Wis. Stat. 704.17(1)(a) & (2)(a)).

Your county, community action agency, or churches might assist in paying the rent if you cannot pay it. Many landlords will enter into payment agreements with the tenant. It is always a good idea to talk to the landlord to

make a payment plan. Often the landlord wants to avoid court as much as the tenant does. This agreement should be in writing. Tenants should send a dated letter that explains how much rent is attached and any payment plan that was agreed to, if there is no written agreement. Tenants should keep a copy of the letter and check for documentation that they paid within the time required. If a landlord refuses to take your money, make sure to document that as well.

5-day Notice for Non-Rent Violation: This is a warning that the tenant damaged property or violated a lease rule. The landlord has to allow tenants at least 5 days to cure (fix) it and the tenant is only required to take "reasonable steps" to stop the violation, or make a "reasonable offer" to pay the landlord in the case of damages to the unit (if it is a written lease that is not month-to-month) (Wis. Stat. 704.17(2)(b)). Tenants should keep a copy of a letter to the landlord that either denies any violation, or explains that the tenant has taken reasonable steps to cure it (like turning down the stereo or getting rid of a keg of beer) within 5 days. Remember, the landlord has the responsibility to prove to the judge that you violated your lease. These violations are often hard to prove.

14-day "No-Right-To-Cure" Notice: This orders you to move within a period of at least 14 days, *even if you fix the problem*. The tenant has no right to cure! Landlords can give this notice to week-to-week and month-to-month tenants. Tenants with rental agreements of more than a month can only be given this notice if they already received a 5-day for the same violation type (rent or non-rent) within the previous 12 months (Wis. Stat. 704.17(1)(a) & (b) and 704.17(2)(b)).

5-day notice with no right to cure: This is rare. It can be given by the landlord only if a law enforcement agency notifies the landlord that the property is a "drug or gang nuisance" (suspected manufacture, delivery or selling of drugs, or suspected organized gang activity by the tenant or in the tenant's unit). A tenant can challenge this termination. They should do it in writing within the five days (and keep a copy). Then the landlord must let the tenant stay or schedule a court hearing and prove the "drug nuisance" to a judge (Wis. Stat 704.17(1)(c), (2)(c) and (3)(b)).

30-day notice to cure is served only to tenants with a lease for more than a year, giving them at least 30 days to pay late rent or take steps to stop violating lease rules. (Wis. Stat. 704.17(3)(a)).

Can landlords give either a 5 or 14-day notice?

If the tenant has a rental agreement for a set term of a year or less, the landlord must serve the tenant with a 5-day notice for the first lease violation. If the tenant commits a violation in the same category (rent or other non-rent violations) within 12 months after the 5-day notice was given, the landlord may serve either a 5- or 14-day notice (Wis. Stat. 704.17(2)).

If the tenant has a periodic rental agreement (such as month-to-month), the landlord may give a 5- or 14-day notice for the first rent payment violation or substantial violation of the lease (Wis. Stat. 704.17(1)).

Delivering the Notice

Note: A landlord's eviction notice is not the same as a Summons and Complaint from Small Claims Court, which must be served by someone not a party to the case.

The landlord should try to give the notice to the tenant or someone in the tenant's family over the age of 14. If the landlord has tried that, he or she may post a copy of the notice in an obvious place on the rented premises and mail a copy to the tenant's last known address, or send it by registered mail. However, if the tenant acknowledges that they actually received the notice, it does not matter what method of service the landlord used (Wis. Stat. 704.21(1) & (5)).

Responding to the notice

Once you receive a 5-, 14-, or 30-day notice, you have three options:

1. Fix the problem and remain in the apartment, if applicable. You have the right to remain in the apartment if you received a 5-day notice with an option to cure AND you pay the full rent due or take reasonable steps to fix another type of violation within the time limit (the day served, Saturday, and Sunday do not count (Wis. Stat. 801.15(1)). The landlord does not have the right to remove you, go to court, or to refuse a rent payment from you. Write a dated letter to the landlord saying the problem is cured and keep a copy. If you received a 14-day notice and fix the problem (remembering to document with a copied letter that you cured it) you would have to negotiate with your landlord to stay. With a 14-day notice, or after the 5-day notice expires, the landlord could refuse your rent and file an eviction complaint to schedule a small claims court hearing. If you reach a settlement, get any agreement in writing, signed by all parties, and keep a copy for your records.

Under 2011 Wis. Act 143, if the landlord files in court and accepts your rent after the 5-, 14- or 30-day notice expires, you could still be evicted unless you can show another reason why you should not be. The fact that the landlord accepted your rent cannot be the sole defense in an eviction action (Wis. Stat. 799.40(1m)). (3/31/11)

2. Contest the violation and stay. You might wish to stay if you believe the landlord had no legal reason for giving the notice. Remember, you have a right to a trial and the landlord will need to pay a filing fee, wait for a hearing, prove you violated the lease, and prove they served proper notices. Often times, an agreement is reached at court. Sometimes evictions have no grounds. Some

evictions are thrown out or tenants win counter-claims because of discrimination or landlord retaliation. Judges can even allow tenants to reduce a percentage of rent to compensate for major health and safety hazards. Contact the Tenant Resource Center for more information or call a housing attorney for legal advice.

Note: Even if the court determines that you can stay, once the landlord files a complaint, the complaint is public record even if the case is dismissed. Future landlords might reject you for the dismissed eviction—so it is better to avoid the filing of a complaint if possible, or be prepared to explain this to prospective landlords. If your case does appear in CCAP, make sure to remind the landlord to look at the case details to see the dismissal.

Warning: The landlord could win the eviction and get a judgment for a minimum of double the pro-rated rent for each day you stayed after the 5- or 14-day expired. Double damages are rare, but it happens. **Wis Act 143 strengthens the language for landlords to get double damages, "at their discretion" (Wis. Stat. 704.27). (3/31/12)**

Sometimes the safest option is to negotiate with your landlord; any agreement should be in writing with copies for both you and your landlord. Tenants and landlords in Dane County can use the Housing Mediation Service at (608) 257-2799 to negotiate an agreement. Mediation is also available free at the courthouse upon request. If your landlord filed an eviction and you have since come to an agreement, call the court to make sure.

3. You can move out. This may be an option if you have a place to go. However, moving out does not end your responsibility for the rental agreement. Even if you leave, you will probably still owe the rent, as well as the cost of re-rental ads, until the landlord re-rents or until the lease ends. It is important to consider vacancy rates in your area. Will your apartment rent easily or not, and will you be able to find a place to go? (The landlord has a duty to make all reasonable efforts to re-rent the unit, according to Wis. Stat. 704.29.) Also, even if you leave, the landlord may still file in court for the money owed, or file in court to evict you, just to make sure you do not move back in. (Avoid this by giving the landlord notice in writing of your move-out date and keep a copy for your records.) The eviction on your court record, the landlord's bad reference, or the eviction on your credit report can make it difficult to move into another apartment.

What if I don't move out?

The only way a landlord may remove you is by a court order. LANDLORDS CANNOT: Change your locks, remove your possessions, push you out, turn off your utilities, throw things out in the street, or do any "self-help" eviction. These are ILLEGAL evictions and you can sue the landlord for double damages, plus court costs and reasonable attorney fees if they take these actions (ATCP 134.09(7)).