

Leaving Early: Subletting

Sublessor: The original tenant

Sublessee: The new tenant

Joint and several liability: Just like roommates on a lease, the sublessor and sublessee can *both* be held responsible for unpaid rent and damages to the property until the end of the lease, at the landlord's discretion.

Risks of Subletting

If you sublet, you will still be on the lease, even though you will no longer be living in the rental unit. If the person you sublet to does not pay the rent, or damages the apartment, you will be financially responsible.

Reasons to Sublet

Although subletting can be risky, you may want to sublet if you wish to return to the same apartment after a time away, or feel that you'll need to offer an incentive (such as reduced rent) to find someone to move in. If you have roommates and you are the only one moving out, subletting may be your only option.

Issues to consider before subletting

Landlord Permission. Tenants who have regular written leases that are not month-to-month can sublet without the landlord's permission, unless the lease says otherwise (Wis. Stat. 704.09(1)). If you sublet without permission that is required in the written lease, the landlord can evict the sublessee(s) and possibly hold the sublessor(s) liable for remaining rent and other costs until the place is re-rented.

Landlord Sublet Procedures. Some landlords have specific procedures which you must follow for sublet permission. Some landlords require that you advertise, show the apartment, and forward interested parties to them for approval. Some landlords are willing to show the apartments. Some landlords demand "sublet fees" as well as the actual cost of ads. If a flat fee is required, ask in writing for itemized fees, so you know the actual and reasonable costs. Flat fees over \$100 are likely illegal.

Roommate Permission. If you have roommates, finding an acceptable sublessee may become an issue with them. All parties on the lease must agree to any major changes, including adding new tenants. Make sure that your roommates meet the potential sublessee. Remind your roommates that they are "jointly and severally" liable, so if you do not find a sublessee and do not pay the rent, the landlord may try to evict and/or collect your rent from them.

Screen the Sublessee. You will want to screen potential sublessees carefully since you can be held responsible for unpaid rent or damages. Ask them the same questions a landlord would about their credit history and finances.

Sublet Agreements. The single most important step is using a written sublet agreement. List all terms of the sublet clearly, such as the starting and ending dates, amount of

rent, how rent will be paid, the security deposit arrangement, and who will clean the apartment at the end of the lease or pay charges to the deposit. Include any particular conditions such as whether or not the apartment will be furnished, responsibilities like taking care of plants or pets, and parking.

Copies of sublease agreements are available at the Tenant Resource Center office and on our website. Everyone should have a signed copy, including the landlord (if obtaining their permission) and roommates who are agreeing to the sublet.

Subletting and Security Deposits

Because you are ultimately responsible in a sublet agreement, you may want to collect a deposit from the sublessee. If you accept a security deposit you must follow the same laws and regulations that apply to landlords. There are two ways to deal with the security deposit in a sublet:

1. The easiest way is to collect it from the sublessee when the sublessor moves out and the new tenant moves in.

Pro: The original tenant gets their deposit back when they move, and the new tenant gets the refund from the landlord at the end of the tenancy.

Con: If the sublessee doesn't like the refund they get back from the landlord at the end of the lease, they can sue the landlord or the original tenant for the amount they feel was wrongfully withheld. For everyone's protection, follow good check-in and check-out procedures (see below).

2. The safest way to deal with the security deposit is to set up a time when the sublessor, the sublessee, and the landlord meet to perform a check-in/check-out. At that time, the landlord refunds the deposit owed to the sublessor and collects the new security deposit from the sublessee. Put this transfer in writing, and give everyone copies.

Pro: The sublessor cannot be held responsible if the sublessee does not get their entire deposit back.

Con: It can be a challenge to find a time when everyone is willing to meet at the apartment, it requires the landlord's permission, and even then the landlord may not be willing to participate.

In some cases, the landlord may charge the sublessee a deposit while trying to keep the original tenant's deposit.

In the cities of Madison and Fitchburg, this charge is illegal if the total deposit exceeds one month's rent.

Landlords may charge a sublessee any amount for a deposit. (2/21/11) For more information see our "Security Deposit" brochures, visit our website, or stop in our office. Remember that for leases longer than one year, unless your written lease says otherwise you do not need the landlord's permission to sublet (although it is always a good idea).

Ending a Month-to-Month

Tenancy

Month-to-month tenancies and other periodic tenancies are normally terminated by written notice given at least one full rental period before the termination takes effect (Wis. Stat. 704.19(3)). Both the tenant and the landlord have the right to give notice without a reason (as long as the landlord is not acting out of discrimination or retaliation). For more information see our brochures on "Landlord Retaliation" and "Discrimination.") Both parties must follow the same procedures as specified in Wis. Stat. 704.19:

- Give written notice of intent to terminate. Verbal notices are not valid, no matter whether the lease was written or verbal (Wis. Stat. 704.19(20(a))).
- State the date you are ending your lease. The date must be the last day of a rental period, and at least 28 days away. If the termination notice is given less than 28 days before the end of a rental period, it is still valid; however, it goes into effect at the end of the following rental period (Wis. Stat. 704.19(5)).
- If your lease says that you must give more than 28 days notice, that is valid and enforceable, even if the lease has since expired. Check your most recent written lease to see the amount of notice required.

When a Regular Lease Ends...

Tenants and landlords can both choose to end a lease when the lease term is over (for example, a year-long lease with no automatic renewal clause). The landlord has NO legal obligation to renew the lease unless:

- The landlord is choosing not to renew for discriminatory or retaliatory reasons (see our brochures on "Landlord Retaliation" and "Discrimination") OR
- There is an automatic renewal clause in effect, and the landlord hasn't given appropriate written notice (Wis. Stat. 704.15).

NOTE: A non-renewal notice (for a period or year-long lease) is NOT the same as eviction. For more information please see our "Eviction" brochure, visit our website, or stop in our office.

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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.

Ending A Lease

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!](http://tenantresourcecenter.org)

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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.

Reasons To Get Out of A Lease

Contrary to popular belief, there are no provisions in Wisconsin or local laws that permit tenants to cancel a lease if they retrace within a certain time, buy a house, become ill, lose their job, get a job transfer, etc. **However, there are now six clear ways to get out of a lease with no further obligation to pay rent. (3/31/12)**

1. Mutual Agreement to End

The landlord and tenant(s) may mutually agree to end a tenancy at any time without further responsibility by either party. The landlord may be willing to sign an early termination in order to:

- Avoid disputes between tenants
- Avoid the court costs of the eviction process
- Receive a fee that the tenant offers to pay
- Avoid the cost of a building inspector
- Have access to the apartment to make repairs
- Have access to the apartment so they can sell it

If the tenant has a written lease, the agreement to terminate must be in writing, and it requires the consent of everyone on the lease. Even if the tenant does not have a written lease, it is still a good idea to put the agreement to terminate in writing to protect both parties and to have a clear record about what the agreement was. If the landlord asks for a payment, the tenant cannot be required to pay more than the landlord's actual and reasonable costs (including lost rent and advertising costs, but not compensation for time spent re-renting the apartment), but may choose to pay more in order to motivate the landlord to end the lease. Sample mutual termination forms are available from the Tenant Resource Center.

2. Constructive Eviction

If there is a severe health or safety issue which the landlord knows about, has been given a reasonable time to fix, and hasn't repaired, a tenant may be able to move out and no longer be liable for rent. It has to be a very severe case (the law mentions floods and fires as examples) and requires the tenant to follow very specific procedures (Wis. Stat. 704.07(4)).

3. Servicemembers' Civil Relief Act

The Servicemembers' Civil Relief Act allows tenants to end a lease if the tenant enters into military service, or if the tenant receives military orders to change station or to deploy for 90 days or more. This applies to leases which are occupied or are intended to be occupied by a

servicemember or a servicemember's dependents (spouse, child or an individual for whom the servicemember provided more than half the individual's support for 180 days preceding application for relief). Tenants must give written 30 days' notice and a copy of the military orders to the landlord in order to use this act.

4. The Safe Housing Act

The Safe Housing Act allows victims of domestic violence, sexual assault, stalking, and child abuse to terminate a lease if they feel they face an imminent threat of serious physical harm by remaining on the premises, and have an accepted form of documentation, such as a permanent restraining order (Wis. Stat. 704.16(1)). To end a lease under these laws, the tenant must write a letter to the landlord saying that they wish to end their rental obligation because they and/or their child are in imminent danger of physical harm, and provide a copy of the documentation (example: a court order) to the landlord. Under these limited circumstances, the lease would end as if giving a termination notice for a month-to-month tenancy (see below) (Wis. Stat. 704.16). If you have questions about this, contact a local Victim Witness program (through your county court), Domestic Abuse Intervention Services in Dane County (608-251-4445), or the National Domestic Abuse Hotline (800-799-7233) to find local resources in your county in Wisconsin.

5. The Tenant Has Died

Wis. Stat. 704.165 says that a lease is terminated 60 days after a landlord is notified of a tenant's death (or before, if the lease ends before the 60 days). After 60 days, the tenant's estate is not liable for any further rent. If the unit is surrendered by the estate prior to the completion of the 60 days, then a landlord would have to mitigate damages in the same way as if the lease had been broken. The lease would still be valid for any remaining co-tenants (for instance, a living spouse who was named on the lease).

6. Illegal Lease Clauses

If your lease has any of the following provisions, **you can automatically break your lease. These provisions make your lease "void and unenforceable" (Wis. Stat. 704.44). (3/31/12)**

- Allowing a landlord to increase rent, decrease services, bring an action for eviction, refuse to renew, or to threaten any of these actions because a tenant has contacted law enforcement or emergency services for their safety (Wis. Stat. 704.44(1m)).
- Evicting in any other way besides by state law (see our "Eviction" brochure) (Wis. Stat. 704.44(2m)).
- Speeding up rent payments for breaking the lease (Wis. Stats. 704.44(3m)).
- Making the tenant pay the landlord's attorneys fees or court costs, unless awarded by a judge (Wis. Stat. 704.44(4m)).
- Allowing the landlord to "confess judgment" for the tenant in court (Wis. Stats. 704.44(5m)).

- Excusing the landlord for liability for property damage or personal injury due to negligent acts or omissions by the landlord (Wis. Stat. 704.44(6)).
- Imposing liability on the tenant for personal injury arising from causes beyond their control, property damage caused by natural disasters, or by persons other than the tenant or their guests (Wis. Stat. 704.44(7)).
- Waiving responsibility for landlord to provide premises in habitable condition or maintain the property (Wis. Stats. 704.44(8)).
- Allowing the landlord to terminate the tenancy if a crime is committed in or on the rental property, even if tenant could not have reasonably prevented the crime (Wis. Stats. 704.44(9)).

Note: Your landlord need not have acted (or tried to act) on the illegal provision(s) and your landlord cannot terminate your lease without your consent just because they included an illegal provision.

Leaving Early

Tenants with other circumstances have TWO options for leaving early: Breaking their lease and subletting.

Leaving Early: Breaking A Lease

All tenants may break their leases, even if the landlord says that subletting is the only option. To break your lease, write a letter to your landlord (keeping a copy for yourself) stating that you are breaking your lease (include the date that you are moving out) and stop paying rent. Remind the landlord that s/he has a duty to mitigate (lessen) damages by making efforts to re-rent the apartment as soon as possible. All tenants on the lease must break the lease at the same time (Wis. Stat. 704.29). The Tenant Resource Center has copies of sample letters. You will be obligated to pay remainder of the rent until a new tenant signs a lease and moves in, but after that you will no longer be responsible for the rental unit, unlike a sublet. Your landlord can bill you for the rent during the time that the unit remained unrented, provided they mitigate their damages (see below).

Mitigation

The landlord has the obligation to mitigate (lessen) the damages (rent you owe) by trying to find a new tenant once you move out and stop paying rent (Wis. Stat. 704.29(2)). This means that the landlord:

- Must advertise your apartment the same way s/he normally advertises vacant apartments (Wis. Stat. 704.28(20(a))).
- Must show your apartment to interested tenants. Although s/he cannot try to steer prospective tenants away from your apartment to other vacant apartments, s/he is not required to rent your apartment first (Wis. Stat 704.29(2)(b)).
- May charge you the actual costs associated with re-renting your apartment (advertising, etc.), but not for the landlord's time.

If the landlord is not mitigating

- Compile evidence showing that your landlord hasn't mitigated. (See examples of such evidence below).
- Send a letter to your landlord (keeping a copy for yourself) detailing your evidence of his/her failure to mitigate, and state that this failure means that you are no longer obligated to pay rent.
- If the landlord takes you to small claims court for unpaid rent, you will need to prove that s/he failed to mitigate or that his/her efforts to mitigate were not reasonable, so you should keep all evidence and correspondence relating to the landlord's failure to mitigate (Wis. Stat. 704.29 (3)).

Proving whether the landlord is mitigating

- Look for ads for your apartment in local newspapers, on Craigslist and in rental publications.
- Have a friend call to inquire about vacant apartments to see if the landlord mentions your unit. If there are many apartments available in a complex, your friend could mention specifics about your unit (such as the number of bedrooms, the floor it's on, which direction the windows face). Get a written statement from them.
- Find out if your landlord has raised the price of your apartment or changed the lease (for example, now not allowing pets or smokers). Significantly altering the rental terms in a way that makes the unit more difficult to rent, or makes it less desirable to potential tenants, can be failure to properly mitigate damages.
- Stop by to see if the landlord is renovating or using your apartment. Take photos if this is the case.

Re-renting the apartment yourself

This is often the fastest way to find a new tenant, especially if you are worried that your landlord will not try to re-rent the apartment.

- Place your own ads and have people call you directly.
- Show the apartment yourself.
- Give applications to interested people (get them from the landlord). The landlord can only require they meet the same standards you were required to meet.
- Keep names and phone numbers of interested tenants so you can follow up with them in case the landlord is trying to keep people from renting the apartment. Get written statements, if possible.

If the landlord refuses to sign a lease with tenants you have found to re-rent the apartment, remind the landlord that it is their duty to mitigate. If they don't sign the lease, it will be evidence that they are not mitigating and you will no longer be required to pay rent for the apartment.