

8. Repair and deduct (Milwaukee ONLY). In some cases, the tenant may make the ordered repairs on their own and deduct the cost of those repairs from the rent. *This option is risky and very specific procedures are required by law.* **Before attempting to repair and deduct, please contact the Milwaukee Division of Neighborhood Services at: (414) 286-2268 or visit: <http://city.milwaukee.gov/DNS>.**

NOTE: THE FOLLOWING OPTIONS ARE RISKY AND THE LAWS ABOUT THEM ARE COMPLICATED. BEFORE ATTEMPTING TO WITHHOLD RENT OR CONSTRUCTIVELY EVICT, PLEASE CONTACT BUILDING INSPECTION AND/OR A TENANT RESOURCE CENTER HOUSING COUNSELOR.

9. Withhold rent. *Withholding rent to pressure a landlord to make repairs is extremely risky.* When a tenant withholds rent, a landlord may take the tenant to eviction court for nonpayment of rent. If that happens, the tenant must try to prove to the court that withholding was justified. Since tenant-landlord laws do not authorize a tenant to do this, it is never certain that the court will decide in the tenant's favor; instead, *the tenant may be evicted.* After you have exhausted all other possibilities, here are four ways to improve your chances of successfully withholding rent:

1. Request the repairs several times in writing before withholding rent. Give your landlord a reasonable amount of time to make the repairs.
2. Put withheld rent into an escrow account, or savings account. Make the deposits when the rent is due and do not spend it. You might have to prove to a judge that you were withholding rent for the specific purpose of enforcing your rights, and that the money is available if the repairs are completed.
3. Include a note to your landlord with your partial rent payment, explaining why you are withholding rent. Mention that you have the money in an escrow account and that you will pay in full when your landlord has made the necessary repairs. Keep a copy for yourself.
4. After your landlord makes the repairs, pay the withheld rent.

10. Move out and argue constructive eviction. This is a defense you can use in court if your landlord sues you for breaking the lease when you moved out because repairs were needed so badly that the rental unit became uninhabitable. To be successful, there must be a severe health or safety hazard, the tenant must give the landlord a reasonable amount of time to repair the problem, and only then if it is not repaired may the tenant constructively evict with no further obligations under the lease. Fires and floods are good examples of when someone may have to constructively evict (Wis. Stat. 704.07(4)). This happens in only the most extreme repair situations and involves risk on the part of the tenant. If you lose, the consequences are the same as if you break your lease. For more information, see our brochure on "Ending A Lease."

10. Call Consumer Protection. Consumer Protection laws require landlords to follow through on repair promises. If your landlord made a written or verbal promise to make a repair but has not followed through, you may file a complaint with Consumer Protection by calling (800) 422-7128 or visiting www.datcp.wi.gov. If the landlord never made the promise in writing, send the agency copies of your letters to the landlord and mention the landlord's verbal promise. Your letters may be good evidence, especially if the landlord never wrote back to deny the promise was made.

Landlord Entry

Landlords are required to give 12 hours notice before entering a rental property for repairs or to inspect. You can agree to let your landlord enter sooner to make the repairs more quickly. This is a one-time exception and the landlord still needs to give proper notice the next time. In some cases, tenants may have signed a NONSTANDARD RENTAL PROVISION that modifies state law regarding landlord entry. Check your lease for any such clauses. The landlord does NOT need your permission to enter at the time they've scheduled the repair; they need only give the proper notice.

For more information about landlord entry, see our handout "The Real Deal with Landlord Entry," visit our website, or consult with a Tenant Resource Center housing counselor.

Suing for Damages

The new laws indicate that **any violation of chapter 704 may be an unfair trade practice and therefore entitled to double damages, court costs and reasonable attorney fees.** 704.95: "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. This means that if the repair problem cost you money, such as eating out when the fridge was broken or using space heaters while the furnace was broken, you can sue your landlord in small claims court for double damages, court costs and reasonable attorney's fees. (3/31/12)** For more information on filing a complaint please contact the Tenant Resource Center.

Useful Phone Numbers

Madison Gas & Electric Utility Emergency: (800) 245-1123
WE Energy: (800) 261-LEAK
Alliant Energy (Wisconsin Power & Light Co.)
(800) 862-6263 (gas & water)

Xcel Energy
(800) 895-1999 (electricity)
(800) 895-2999 (gas)
Wisconsin Radon Information Centers (888) 569-7236

Building Inspectors
City of Madison (608) 266-4551
Town of Madison (608) 210-7261

Appleton (920) 832-6411
Beloit (608) 364-6650
Cottage Grove (608) 837-3371
De Forest (608) 846-6751
Eau Claire (715) 839-4947
Fitchburg (608) 270-4240
Fond du Lac (920) 322-3575
Green Bay (920) 448-3300
Janesville (608) 755-3060
Kenosha (262) 653-4263
La Crosse (608) 789-7530
Mazomanie (608) 767-2272
McFarland (608) 838-3154
Middleton, City (608) 827-1070
Middleton, Town (608) 833-4346
Milwaukee (414) 286-3441
Monona (608) 222-2525
Mt. Horeb (608) 437-7884
Oregon, Town (608) 835-2982
Oregon, Village (608) 835-3118
Oshkosh (920) 236-5137
Racine (262) 636-9464
Sheboygan (North) (920) 459-3481
Sheboygan (South) (920) 459-3480
Stoughton (608) 873-7626
Sun Prairie (608) 825-1184
Superior (715) 395-7288
Verona (608) 845-6695
Wausau (715) 261-6780
Waukesha (262) 524-3530
Waunakee (608) 849-5613
Wauwatosa (414) 479-8957
West Allis (414) 302-8400
Westport (608) 845-4375

For other cities and towns, call Tenant Resource Center or consult your local government listings.

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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.

Repairs in the State of Wisconsin

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.

Landlord Repair Responsibilities

Before entering into a rental agreement or accepting earnest money, the landlord must do the following:

- Tell the tenant in writing about a lack of hot or cold running water, lack of safe electrical system, lack of sewage disposal, heating systems unable to reach 67°F in all living areas in all seasons, and all other likely health or safety hazards (ATCP 134.04(2)(b)). The landlord should also disclose all **documented uncorrected building code violations that are a significant threat to the prospective tenant's health or safety** (Wis. Stats. 704.07). **(3/31/12)**

Note: The new laws only changed the language about required disclosures in Wis. Stats. 704.07. It is unclear how and whether this changed the disclosure requirements in ATCP 134 and how that impacts local ordinances, if at all. However, the items noted above clearly present a threat to the tenant's health or safety and should be disclosed. Otherwise the tenant could sue for misrepresentation (including double damages, court costs and reasonable attorney fees) under ATCP 134.09(9).

- Before the rental agreement is signed, put any promises to repair in writing, with specific deadlines for each repair (ATCP 134.07).

- Keep heating, plumbing, electrical system, and building structure in good condition (Wis. Stat. 704.07(2)(a)).

- Keep clean and in good condition any common areas, such as hallways, storage areas, laundry rooms, parking lots, and yards (Wis. Stat. 704.07(2)(a)(1)).

- Maintain all supplied equipment, including appliances (Wis. Stat. 704.07(2)(a)2).

- Comply with all local housing codes. If the building is occupied by one or more tenants, improper use or damage by one tenant does not relieve the landlord of the duty to maintain the premises for the other tenants in the building (Wis. Stat. 704.07(2)(a)(5)).

- Provide a working smoke detector on each floor including the basement. If a tenant gives written notice to the owner or manager that the smoke detector is

not functional, the landlord must take action within five days to make the smoke detector functional (Wis. Stat. 101.145).

- The state requires carbon monoxide detectors to be installed and maintained in all new and most existing residential buildings (Wis. Stat. 101.149).

Tenant Repair Responsibilities

- Perform minor maintenance such as changing light bulbs (Wis. Stat. 704.07(3)(b)).

- Keep the apartment in safe, sanitary condition.

- Comply with all local housing codes (Wis. Stat. 704.07(3)(c)).

- Keep thermostat set at a reasonable temperature to prevent freezing of pipes and other equipment.

- Repair, or pay the landlord to repair, all damages caused by the tenant or their guests (Wis. Stat. 704.07(3)(a)).

- Keep working batteries in smoke detectors and give written notice to the landlord if smoke detectors are not working properly (Wis. Stat. 101.45).

Before You Sign Your Lease

There are several things tenants can do before signing a lease to minimize the chances of future repair problems. For more information please see our "Preparing to Rent" brochure, visit our website, or consult a Tenant Resource Center housing counselor.

- Call Consumer Protection at (608) 224-4953 or (800) 422-7128 to check if there have been any complaints filed against your prospective landlord.

- Call the local building inspector to check if there are any outstanding building code violations or citations at the property you are considering.

- Inspect the rental unit you are considering, taking notice of repairs and improvements that are needed.

- Negotiate with your prospective landlord about what repairs or improvements will be made, and write those into the lease.

- If your lease has a provision waiving responsibility for the landlord to provide the premises in habitable condition or to maintain the property, you can terminate your lease with no further obligations. These provisions make your lease "void and unenforceable." For more information see our "Ending Your Lease" brochure.

Moving In

Follow these steps for documenting repair problems:

1. Fill in your check-in form.

The new law requires the landlord to provide the tenant a **"standardized information check-in sheet that contains an itemized description of the condition of the premises at the time of check-in."** **(3/31/12)** This means the landlord should fill in the check-in sheet. If the landlord fails to do so, it will be very difficult for them to prove the condition of the apartment and deduct from your security deposit.

The new law also gives the tenant **7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord.** **(3/31/12)** This means there should also be an area for the tenant to fill in the check-in sheet with their description of the premises. It is unclear if there is a deadline for the tenant to fill in the check in sheet, but the landlord should give them at least 7 days (Wis. Stat. 704.08). Failure to meet the landlord's deadline in any way does not negate the information on the form.

Tenants should keep a copy of the completed check-in form or **forms (3/31/12)** for themselves. If you didn't get a check-in form, make your own or get one from the Tenant Resource Center and send a copy to the landlord. Completing the form will document the state of the rental unit when you moved in, and what damages you should not be charged for.

2. Request a list of previous tenant's deductions.

The landlord is required to let you know that you can get a list of the deductions from the previous tenant's security deposit (ATCP134.06(1)(a)2). If requested, they have to provide this within 30 days, or within 7 days after they return the previous tenants' security deposit, whichever is later (ATCP 134.06(1)(b)). This list may be helpful in recognizing other repairs that need to be done. The landlord can impose a deadline by which you can make this request, as long as it is not less than 7 days after you originally pay the security deposit.

3. Request repairs.

A check-in form is not a request for repairs; it simply documents the condition of the apartment. If you want the landlord to fix certain problems, follow the suggestions in the next section for getting repairs done. The Tenant Resource Center has sample forms for requesting repairs.

Getting Repairs Done

1. Make a list. Before contacting the landlord, make a list of the repair problems that need to be fixed.

2. Call the landlord. Tell the landlord about the needed

repairs and request they be made within a reasonable time limit. Be sure to contact the landlord as soon as there is a problem, since some repair problems will worsen if they go unaddressed. Keep a log of all calls, including the times and dates of calls, who you talked to, and what you requested.

3. Put it in writing. If the landlord does not contact you or make repairs within a few days, write a letter or e-mail and include a reasonable deadline for the completion of repairs. Keep a copy for yourself. Landlords often take written correspondence more seriously than phone calls, so be sure to write if your landlord has not responded to previous verbal repair requests.

4. Emergency exceptions. For some urgent problems, such as no heat or a broken lock on the main door, you might choose to contact building inspection immediately, and not go through the steps of writing letters if the landlord is not responding to phone calls. **If you smell gas, call your utility company immediately!**

5. Follow-up. If your landlord fails to perform the requested repairs by the deadline, write a second time. This correspondence should note the previous repair request and announce you will take further action (see below) if repairs are not made by a certain date.

6. Call the building inspector. If the landlord still has not made the necessary repairs, call the Building Inspection Unit. Building Inspection can order the landlord to fix certain problems, such as lack of heat or hot water, pest infestation, missing screens or storm windows, mold, etc. Cosmetic repairs such as faded paint or stained carpeting will usually not be included. The building inspector will order the landlord to make the repairs within a specified amount of time and will return to see that the repairs are complete.

Find your local building inspector at the back of this brochure or check your local government listings. If you live in an area that has no building inspector and if there are major safety hazards in your apartment, such as faulty wiring or pest infestation, you can try calling a fire inspector or a public health inspector.

Tenant Resource Center housing counselors have the building inspector phone numbers for most cities and towns in Wisconsin. Call us toll-free at: 877-238-RENT.

7. Apply for rent abatement. The State of Wisconsin does not have a formal process for rent abatement (reduced rent until a repair is made) like Madison and Fitchburg. Rent abatement is allowed under Wisconsin law, but the process is unclear (Wis. Stat. 704.07). If the building inspector orders repairs and the landlord does not complete them by the deadline, or if your area is not served by a building inspector, you could deduct a portion of your rent consistent with the severity of the repair problem. To decide how much to deduct, you could consult the City of Madison rent abatement percentages as a guide. (See MGO 32.04.)