



Security Deposits 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.

What if I don't receive my full deposit or a list of deductions?

If the landlord does not return the deposit or a list of deductions within the 21 of your lease ending, you can sue the landlord for double the amount wrongfully withheld from the deposit, plus court costs and reasonable attorney fees (Wis. Stat. 100.20(5)) & 704.95).

What might my landlord deduct from my security deposit?

Standard legal deductions:

- unpaid rent (unless you left early and the landlord didn't properly mitigate damages (Wis. Stat. 704.29))
- unpaid utilities owed under the rental agreement or for which the landlord becomes responsible
- damages caused by the tenants or their guests that go beyond "normal wear and tear"
- unpaid mobile home parking fees (ATCP 134.06(3)(a) & Wis. Stat. 704.28(1))

Nonstandard legal deductions

Your landlord can deduct for reasons other than those listed above if you initialed provisions on a separate page titled "NONSTANDARD RENTAL PROVISIONS" when you signed your lease. This may include reasonable late fees, sublet fees, etc. (ATCP 134.06(3)(b) & Wis. Stat. 704.28(2)).

Illegal deductions

Landlords may never deduct for "normal wear and tear" or for other losses that the tenant is not responsible for under the law even if the tenant signed a NONSTANDARD RENTAL PROVISION authorizing these deductions (ATCP 134.06(3)(c), Wis. Stat. 704.28(3)).

Carpet Cleaning

It is illegal to deduct for routine carpet cleaning from the security deposit—even if you signed a lease that states that you must pay for carpet cleaning. Such lease provisions are illegal. The only exception is if you damaged the carpet beyond "normal wear and tear." If your landlord deducted money from your security deposit for routine carpet cleaning, inform your landlord in writing that it is illegal (ATCP 134.06(3)(c), Wis. Stats. 704.28(3)).

If your deposit is not returned, file a complaint with Consumer Protection by calling (800) 422-7128 or visit their website at www.datcp.wi.gov.

You may also sue the landlord in small claims court by visiting your county's court, filling out a simple "summons and complaint" form and paying a \$94.50 filing fee. The filing fee can be waived if you can prove you receive Food Stamps or BadgerCare or are otherwise low-income. The landlord may not contest your case, may settle, or may countersue you.

What if my landlord deducted money from my deposit unfairly?

If the landlord violates one of the rules mentioned on this website, you may take the following actions:

Write a letter to your landlord. Be sure to keep a copy of the letter for your records. Sample letters are available at Tenant Resource Center. This letter should include:

- a description of the violation of the 21-day limit and/or each deduction that you disagree with
- specific mention of the law or laws that have been violated (usually ATCP 134.06 or now Wis. Stat. 704.28)
- an explanation that you could take further action, including small claims court for double the amount wrongfully withheld, court costs and attorney fees
- a reasonable deadline for the landlord to return the total deposit (for example, an exact date 5 - 10 days or 1-2 weeks away)

File a complaint with Consumer Protection. You can easily file a complaint with the Department of Agriculture, Trade and Consumer Protection. The bureau keeps complaint records and will contact the landlord about the violation.

Sue in small claims court. If the deadline in your letter expires and the landlord doesn't respond, you may sue your landlord in small claims court for double what was wrongfully withheld plus court costs and reasonable attorney fees (Wis. Stat. 100.20(5)) & 704.95).

Department of Agriculture, Trade and Consumer Protection

Phone: (800) 422-7128

Website: www.datcp.wi.gov

Small Claims Court

Look up your county's small claims court in the government pages in the phone book or by visiting the online directory:

www.wicourts.gov/contact/docs/clerks.pdf

Don't forget to follow Tenant Resource Center on our  ,  , and  accounts for announcements about our annual fundraising events in Madison, and more!

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COMMUNITY SHARES OF WISCONSIN

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.

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 ~~strike through~~ and apply to leases signed **or** some events that happened after that date.

2011 Wis. Act 143 also indicates that **any violation of Wis. Stats. 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 a tenant suing a landlord for **any violation of tenant-landlord law (including security deposit laws) may be entitled to double damages, court costs and reasonable attorney fees.**

What is a security deposit?

State law defines a security deposit as "total of all payments and deposits" given as security and "includes all rent payments in excess of 1 month's prepaid rent." This includes pet deposits, key deposits and furniture deposits, as well as the last month's rent if that is what the landlord requires (ATCP 134.02(11)). Deposits are kept as a guarantee the tenant will pay the rent and not damage the apartment. At the time the landlord accepts the security deposit, s/he must inform the tenant of his/her right to request a list of the physical damages charged to the deposit of the previous tenant (ATCP 134.06(1)(a)(2)).

How much can a landlord charge for a security deposit?

As much as they want to. There are no limits in Wisconsin.

How do I protect my security deposit?

Fill out a check-in form

Your landlord is required to let you know that you have at least seven days to let them know of any problems with the apartment (ATCP 134.06(1)(a)(1)). The new law also 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" Wis. Stat. 704.08). It appears that the landlord should fill in the check-in sheet. (3/21/12)** If the landlord fails to do so, it will be very difficult for them to prove the original condition of the apartment if they try to make deductions from your security deposit later.

Additionally, the new law says: **"The tenant shall be given 7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord" (Wis. Stat. 704.08). (3/21/12)** It appears there should also be an area for the tenant to fill in the check-in sheet with their description of the condition 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 you at least 7 days. We don't believe failure to meet their deadline in any way negates the information on the form. If you do not receive a check-in form, make your own or get one from the Tenant Resource Center (also available on our website). Make a copy and send it to your landlord soon after of moving in. When filling out the check-in form, be thorough. The landlord cannot charge you for any existing damages that you include on the check-in form. Note problems with your unit such as:

- stained carpets or damaged floors
- cracked windows, torn or missing screens
- nail holes, cracked paint, peeling wallpaper
- dirty conditions, fixtures and appliances
- stained walls and ceilings
- plumbing, sinks, bathtubs and tiles that are worn, dirty, mildewed or not working properly
- missing light bulbs or light covers, electrical outlets or other items that do not work (light switches, stove burners, bathroom fans, oven coils, etc.)
- stained, scratched, or otherwise damaged countertops

Get a witness

If you have a friend who isn't living with you, have them witness the conditions at move-in. Have them initial your check-in form or write a description of what they saw.

Take photos or video

Carefully photograph/video the apartment when you move in to document all damage. When taking photos or video, put a note card with the date and number of the unit in the photos. This will help identify when the photos were taken and give a reference for how big a particular stain or damage might be. Send (or e-mail) photos or video to your landlord soon after moving in and keep copies (digital, photocopy or hard copies) for yourself.

Look at the previous tenant's deductions

In addition to doing a check-in form and telling the tenants they have the right to inspect the apartment, the landlord must also inform the tenant that they have the right to request a list of any charges to the previous tenant's security deposit. The landlord can require the request to be in writing. If the tenant requests it, the landlord must send a list of deductions from the previous tenant's deposit within 30 days, or 7 days after they notify the previous tenant of their deductions, whichever is later (ATCP 143.06(1)). If you get such a list and find that there are additional damages that were not fixed prior to your moving in that you did not put on your check-in sheet, this will be important evidence of the condition of the unit when you moved in.

Read your NONSTANDARD RENTAL PROVISIONS

This is the part of the lease where the landlord must note all things that they will take from the security deposit beyond what the law states they may deduct. Make sure your landlord is not charging for liquidated damages (random fees) where actual fees may be calculated. Example: \$500 for having a beer keg in your apartment when the actual cost to the landlord would be less, or none at all. **Landlords may be emboldened with the passage of 2011 Wis. Act 143, but nothing has changed to allow them to charge for random fines (ATCP 134.06(3)(b) & Wis. Stat. 704.28(2)).**

What should I do before leaving?

Try to schedule a check-out appointment with your landlord and make sure you leave with a signed copy of the check-out form. If the landlord notes things are dirty or damaged, offer to clean or fix them. If your landlord refuses, complete your own check-out form and take pictures documenting the condition of the apartment. Remember to put something in the photo to use as a reference point, and include the date. Consider having the same witness who was present for check-in help with the check-out.

If your landlord presents you with a check-out form listing damages that you or your guests did not cause, do not sign it. Instead, complete your own check-out form and keep a copy. You should also take pictures or video to prove the condition of the apartment. Leave your forwarding address on the check-out form or mail it to the landlord. Keep copies of everything!

When must they return my deposit?

The landlord has 21 days after your lease ends to send you either the full security deposit and/or an itemized list of deductions (ATCP 134.06(2)(a), Wis. Stats 704.28(4)).

What if I move out early?

If you move out before the lease is over, return the keys to the landlord and write a letter stating which day you are moving. Give one copy to the landlord and keep one for yourself. The landlord will have to return the security deposit within 21 days after **you "surrender the premises." You must notify the landlord in writing if you move out early, otherwise you will have to wait until the lease is over to get your security deposit back (ATCP 134.06(2)(b),** the rental agreement terminates or the date a new tenancy begins, whichever is first. Wis. Stat. 704.28(4)(b). **(3/31/12)**

Can I cash a partial check?

Yes. A tenant does not have to wait until the security deposit dispute is settled to cash a check. Cashing a partial refund check does not waive the tenant's right to sue for the rest of the deposit (ATCP 134.06(2)(e)).