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# TENANT

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## RESOURCE CENTER

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## Eviction

### Applicable Laws

The primary sources of law applicable to rental agreement terminations and evictions for a Dane County tenant are [Wisconsin Statutes ch. 704](#), [Wisconsin Statutes ch. 799](#), and [Wisconsin Administrative Code ATCP ch. 134](#) (part of Wisconsin's consumer protection regulations).

Any tenant who suffers a pecuniary loss because of a violation of ATCP ch. 134 is entitled to double the pecuniary loss plus costs, including actual “reasonable” attorneys fees. [Wis. Stat. 100.20\(5\)](#). (Pecuniary loss is loss of money or something having monetary value.)

There are also federal laws and local laws that apply in specific contexts, such as federally subsidized housing and claims of discrimination.

If the tenant is renting a manufactured home, additional laws apply. See the guidance for manufactured homes.

### Definitions

**Term tenant:** Tenant who lives in a unit under a lease that has a specific, defined starting and end date and requires payments on a regular basis.

**Periodic tenant:** A tenant who lives in a unit without a valid lease and pays rent on a periodic basis. A periodic tenancy has a specific start date but no specific end date. It includes day-to-day, week-to-week, month-to-month, year-to-year, or other intervals of time. The interval of time is generally shown by the dates on which the tenant pays rent.

**Tenant at will:** A tenant living in a unit without a valid lease and does not pay rent on a regular basis. This is usually an arrangement with friends or relatives. Tenants at will do NOT include individuals living in the unit for free as part of an employment contract or rent to own arrangements.

## Introduction

Eviction is a rental agreement termination process that a landlord uses to remove a tenant when the landlord believes the tenant has violated the rental agreement or violated the landlord-tenant law. The eviction process starts with less formal notices to the tenant, proceeds to a formal summons and complaint that starts the court eviction process, which can then lead to a court order of eviction (a writ of restitution) and a final court hearing on how much money the tenant owes the landlord.

This fact sheet covers the first four steps - from a violation of the rental agreement or statute to filing an eviction action with the court. Please see guidance on the small claims court process for an outline of the eviction court process.

## Violation of the Rental Agreement or Statute

There are six primary lease or statutory violations that allow a landlord to terminate a rental agreement and evict a tenant. Landlords must follow this process for terminating the rental agreement before starting eviction proceedings.

### ***1. Failure to pay rent***

This includes failing to pay rent when due or remaining in default on the full amount of rent owed. Wis. Stat. 704.17(1p)(a), 704.17(2)(a), 704.17(3)(a).

### ***2. Waste violations***

A landlord may terminate a rental agreement and evict a tenant for “waste” which essentially means a “material violation” of their legal responsibility to keep the property free of damages, including pest infestations. Wis. Stat. 704.17(1p)(b), 704.17(2)(b), 704.17(3)(a). These are all generally categorized together under “waste.”

Waste means damage to the property, through direct physical damage or negligence. A material violation is a substantial violation that affects the value of the property. For example, a small scratch on the wall of an apartment that will cost \$20 to fix may not be material compared to the value of the rent paid for the apartment. But a large hole in the wall would likely be material damage.

### ***3. Breach of another term in the agreement***

This includes the tenant breaking any other requirement in the agreement. Wis. Stat. 704.17(1p)(b), 704.17(2)(b), 704.17(3)(a). Examples would include having an unauthorized pet or allowing someone else to live in the rental unit who was not approved by the landlord.

### ***4. Nuisance or Criminal Activity***

A landlord may evict a tenant if the landlord is notified by law enforcement that the property is a drug or criminal gang nuisance. Wis. Stat. 704.17(1p)(c), 704.17(2)(c), 704.17(3)(b). It is not required that anyone be arrested for this procedure to be used but it is necessary that the landlord receive a formal written finding from the local police authority.

A landlord may also evict a tenant under Wis. Stat. 704.17(3m) if the tenant, a member of the tenant's household, or a guest or a person invited to the unit by the tenant or a member of the tenant's household does any of the following:

- Engages in any criminal activity that threatens the health or safety of, or right to peaceful enjoyment of the premises by other tenants, others near the premises, the landlord, or an employee or agent of the landlord.
- Engages in any drug-related criminal activity on or near the property.

It is not required for anyone to be arrested or convicted for a landlord to rely on 704.17(3m) as a reason for evicting a tenant. However, **it is not lawful** for a landlord to use this law against the victim of the crime.

### ***5. Safe Housing Act***

Under Wis. Stat. 704.16(3), a tenant may be evicted if all of the following apply:

- The tenant commits acts or threats that cause another tenant or child of the tenant to face an imminent threat of serious physical harm if the tenant creating the harm or threat of harm remains in the unit;
- The tenant is the named offender in an injunction, no contact order, complaint, or other notice specified in the statute; **and**
- The landlord gives the tenant a proper 5-day notice to vacate. Such notice does not give the tenant the right to cure and then avoid eviction. However, the tenant

does have the right to contest the allegations against them in Court if the landlord follows up with an eviction filing.

It is required that an order be issued by the court naming the tenant or the tenant's child. The Safe Housing Act applies to temporary restraining orders and injunctions when ordered under Wis. Stat. 813.122 for child abuse. But for situations that do not fall under Wis. Stat. 813.122, the Safe Housing Act only applies to an injunction under Wis. Stat. 813.12(4) and Wis. Stat. 813.125(4), not a temporary restraining order.

**NOTE:** The Safe Housing Act also allows a tenant to terminate their lease and move out if: (1) they or their child faces an imminent threat of serious physical harm from another person if the tenant remains in the unit and (2) the tenant provides the landlord with an injunction, no contact order, complaint or other legal notice specified in the statute that protects the tenant or their child. The same restrictions noted above about the restraining order and injunction apply here. The tenant is not liable (responsible) for paying the rent the month after they move out or provide notice, whichever is later. Wis. Stat. 704.16(1)-(2).

## ***6. Holding over***

Tenants can be evicted for staying in a unit after the lease ends. This is holding over. A holdover does not require an eviction notice because there is no termination of the rental agreement because the agreement is over. Wis. Stat. 704.25.

## **Notice Terminating Rental Agreement**

Termination notices must comply with the legal requirements in Wis. Stats. Ch. 704. Those legal requirements cover what must be included in the notice, how the notice is given to the tenant, and the type of notice.

### ***Required Form of a Termination Notice***

All eviction notices **must be in writing**. Wis. Stat. 704.17(4). The notice also must include the following under Wis. Stat. 704.17 and 704.19:

- The basis for the eviction notice (the lease or statutory violation).
- Whether the tenant can cure (fix) the problem and be allowed to stay.
  - If there is a right to cure, the deadline and how it can be cured.
  - If there is no right to cure, the date by which the tenant must vacate the unit.

- If the basis of the eviction notice is that the landlord was notified that the property is a drug or criminal gang nuisance, the notice must also include that the tenant has a right to challenge the eviction if the landlord files an eviction action against the tenant.
- If the basis of the eviction notice is alleged criminal activity under Wis. Stat. 704.17(3m), the notice must also include a description of the criminal activity, the date when the activity took place, and the identity or a description of the individuals involved; advise the tenant they may seek assistance from an attorney, volunteer legal clinic, or tenant resource center; and that the tenant has a right to challenge the allegations in an eviction action if one is filed against the tenant.
- If the basis of the eviction is imminent threat to a tenant or their child's safety under Wis. Stat. 704.16(3), the notice to vacate must also include the tenant's right to challenge the eviction if one is filed.

### ***Giving a Termination Notice and Counting the Notice Period***

Termination notices must be given by the landlord by one of the methods below. The method for providing notice to the tenant determines when the notice period starts to be counted. Wis. Stat. 704.19(7).

**First day.** The time period to cure or vacate most likely starts the day after the notice is given. Wis. Stat. 704.17 (throughout statute, references that notices must give the tenant a certain number of days to cure or vacate “after the giving of the notice”); Wis. Stat. 990.001(4)(a). **NOTE:** There is an inconsistency in the law on when to start counting the time period. Wisconsin Statutes 704.19(7) states that the period *starts on the day* notice is given to the tenant. But the general consensus among attorneys is that the period starts the day after the notice is provided as outlined in the methods section below.

**Last day.** The last day of the notice period counts, unless the last day falls on a Sunday or a legal holiday. Wis. Stat. 704.19(7); Wis. Stat. 990.001(4). If the last day falls on a Sunday or a legal holiday, the last day is the next secular day.

**Example:** A 5-day move out or cure notice is given on Wednesday, December 20. The first day is Thursday, December 21. The fifth day is Monday, December 25. The tenant must move out or cure by Tuesday, December 26 because December 25 is a holiday. If the 5-day move out or cure notice is given on Thursday, December 21, the first day would be Friday, December 22 and the fifth

day when the tenant must either move out or cure would be Tuesday, December 26.

**Methods.** The methods for providing notice under Wis. Stat. 704.21 are:

- Delivering in-person to the tenant.
  - Notice is considered to be given the day after delivering the notice.
- Delivering in-person to a non-tenant who is a “competent member of the tenant’s family” who is at least 14 years old. This does NOT include a guest who just happens to be there when the notice is delivered.
  - Notice is considered to be given the day after delivering the notice.
- Delivering in-person to a non-tenant who is a “competent person” and is “apparently in charge of the unit” or occupying the unit **AND** mailing a copy of the notice to the tenant at their last known address.
  - Notice is considered to be given the day after the date of delivering the notice or the day after the notice was mailed, whichever is later.
- If the landlord has attempted with “reasonable diligence” to provide personal notice through one of the ways above and has not been able to succeed, they can post the notice at the unit **AND** mail a copy of the notice to the tenant at their last known address.
  - Generally, “reasonable diligence” means a landlord has tried at least three times on three different days to personally give the notice to the tenant.
  - Notice is considered to be given the day after the date of posting the notice or the day after the date the notice was mailed, whichever is later.
- Mailing via certified or registered mail to the tenant’s last known address.
  - Notice is considered to be given 2 days after the date when the notice is mailed to a Wisconsin address (5 days if to an address outside of Wisconsin).
- Formally serving the tenant through the process under Wis. Stat. 801.11.
  - Notice is considered to be given the day after the date of service of the notice.

**NOTE:** If the tenant acknowledges or the landlord can show that the tenant actually received the eviction notice even if not through one of the above methods, the law provides that notice will be considered properly given. Wis. Stat. 704.21(5).

## ***Types of Termination Notices***

The proper type of notice depends on the type of lease and the underlying reason for the eviction.

For tenants with a lease of 1 year or less:

- The landlord must give the tenant a *5 day notice with a right to cure* for non-payment of rent if it is the *first time* in the past 12 months the tenant is receiving an eviction notice for non-payment of rent.
- The landlord may give the tenant a *14 day notice to vacate (no right to cure)* for non-payment of rent when the tenant has received a previous eviction notice for non-payment of rent in the last 12 months.
- The landlord must give the tenant a *5 day notice with a right to cure* for waste or other material breach if it is the *first time* in the past 12 months the tenant is receiving an eviction notice for waste or a material breach of the rental agreement. This does not include non-payment of rent.
- The landlord may give the tenant a *14 day notice to vacate (no right to cure)* for waste or other breach when the tenant has received a previous eviction notice for waste or other material breach of the rental agreement. This does not include non-payment of rent.

**NOTE:** The notices may be for *more than* 5 days or 14 days. They can provide more time if the Landlord wishes, or if the Lease requires that. The statute simply requires that “at least” 5 days or 14 days notice be given to the tenant.

For periodic tenants and tenants-at-will:

- Landlords can choose to *either* give a *5 day notice with a right to cure* for all violations of the lease **OR** a *14 day notice to vacate*.
- Landlords may also decide instead to give the tenant a 28-day non-renewal notice and avoid the eviction process.

For tenants with a lease of more than a year:

- Landlords are required to give a *30 day notice with the right to cure* every time the tenant violates the lease, *unless* the lease includes a different process forgiving notices, or time period for curing defaults, in which case the lease language controls.

## TERMINATION NOTICES CHART

Type of notice	Leases for 1 year or less	Periodic tenancy or tenancy at will	Lease for more than 1 year
<b>5 day notice to pay rent (cure) or vacate</b>	YES Wis. Stat. 704.17(2)(a)	YES Wis. Stat. 704.17(1p)(a)	NO Unless the lease specifically allows it Wis. Stat. 704.17(3), (5)
<b>5 day notice to cure waste or other breach (other than non-payment of rent) or vacate</b>	YES Wis. Stat. 704.17(2)(b)	YES Wis. Stat. 704.17(1p)(b)1	NO Unless the lease specifically allows it Wis. Stat. 704.17(3), (5)
<b>5 day notice with no right to cure for drug or gang nuisance</b>	YES Wis. Stat. 704.17(2)(c)	YES Wis. Stat. 704.17(1p)(c)	YES Wis. Stat. 704.17(3)(b)
<b>5 day notice with no right to cure for criminal activity</b>	YES Wis. Stat. 704.17(3m)	YES Wis. Stat. 704.17(3m)	YES Wis. Stat. 704.17(3m)
<b>5 day notice with no right to cure for imminent threat of serious physical harm (Safe Housing Act)</b>	YES Wis. Stat. 704.16(3)	YES Wis. Stat. 704.16(3)	YES Wis. Stat. 704.16(3)
<b>14 day notice with no right to cure for failure to pay rent</b>	YES But only if the tenant was given a 5 day notice to pay rent within the last 12 months Wis. Stat. 704.17(2)(a)	YES Wis. Stat. 704.17(1p)(a)	NO Unless the lease specifically allows it Wis. Stat. 704.17(3), (5)

Type of notice	Leases for 1 year or less	Periodic tenancy or tenancy at will	Lease for more than 1 year
<b>14 day notice with no right to cure (for issues other than non-payment of rent)</b>	<p>YES</p> <p>But only if the tenant was given a 5 day notice to cure for a waste or other breach violation within the last 12 months</p> <p>Wis. Stat. 704.17(2)(b)</p>	<p>YES</p> <p>Wis. Stat. 704.17(1p)(b)2</p>	<p>NO</p> <p>Unless the lease specifically allows it</p> <p>Wis. Stat. 704.17(3), (5)</p>
<b>30 day notice with right to cure for failure to pay rent or correct a waste violation or other breach</b>	<p>NO</p>	<p>NO</p>	<p>YES</p> <p>Wis. Stat. 704.17(3)(a), unless lease provides otherwise</p>

## Resolving a Termination Notice

If the termination notice includes an option to cure it, a tenant can avoid eviction by fixing the problem or moving out within the cure period. Fixing the problem may mean for example: paying the full amount of rent due, including late fees; finding a new home for an unauthorized pet living in the unit; or promising to not smoke in the unit again. For a “material violation” of the lease (something other than non-payment of rent), a tenant has cured the problem if they take reasonable steps within the cure period and then continue with reasonable diligence to remedy it.

If the termination notice does not include an option to cure, the tenant can move out during the notice period or challenge the eviction if the landlord files an eviction action in small claims court.

It is important for tenants to understand that they still may be responsible for rent and/or damages to the unit even if they move out during the notice period in an eviction notice.

If the tenant has a term lease and the tenant moves out before the end of the lease term - either by voluntarily vacating the unit or by eviction - the tenant remains responsible for rent until the term expires under the agreement or the landlord re-rents the unit,

whichever occurs first. After an eviction, the landlord is required to try to mitigate their damages (meaning they must try to re-rent it).

## Eviction Case

If the tenant does not move out within the notice period, or cure the problem within the cure period (if the notice allows an option to cure), the landlord can file an eviction action in small claims court. This will follow the judicial small claims process as outlined in Wis. Stat. ch. 799.

The eviction filing becomes a public record on CCAP. If the court orders a judgment of eviction, the case cannot be removed from CCAP for at least 10-20 years. If the eviction is dismissed, the case cannot be removed from CCAP for at least 2 years. **However, tenants can file a motion with the court to request their name be redacted from the eviction action.** A circuit court judge will decide whether to grant (approve) that motion. Tenants can contact an [attorney](#) or use the online tool, [Legal Tune Up](#) to get more information about removing an eviction record.

## Illegal Self-Help Eviction

The only allowable process to remove a tenant from the rental premises is to follow the steps required under Wisconsin Statutes Chs. 704 and 799, and the rental agreement, if applicable. The landlord must follow the procedures from using the proper eviction notice to using the sheriff to execute the writ of restitution (removing the tenant).

A landlord may not remove the tenant's belongings from the unit, turn off the utilities, lock the tenant out, or take any other similar action to remove the tenant. That is considered illegal self-help eviction. The landlord must follow the legal process for an eviction.

It is a violation of ATCP 134.09(7) for the landlord to engage in a self-help eviction. If a landlord commits such a violation, the tenant will be awarded double their pecuniary (money) loss, plus also have the court order the landlord to pay actual reasonable attorney fee to the tenant's lawyer. Wis. Stat. 100.20(5).