



TENANT

RESOURCE CENTER

Repairs

Applicable Laws

[Wisconsin Statutes ch. 704](#)

[Wisconsin Administrative Code ATCP ch. 134](#)

[Madison Ordinances 32.04 \(rent abatement\)](#)

Before Entering into a Rental Agreement

Mandatory Disclosures

Wisconsin law requires landlords to disclose certain information to a tenant so that the tenant is aware of significant conditions and repair issues before agreeing to move into a unit or giving the landlord any money. Specifically, landlords must disclose to a prospective tenant, before accepting any funds (including earnest money, security deposit, or rent) or entering into a rental agreement:

- Any building or housing code violation if **all** the following apply to the code violation:
 - The landlord knows about the violation.
 - The violation affects the specific rental unit or a common area.
 - The violation is a significant threat to the prospective tenant's health or safety.
 - The violation has not been corrected.
- Any of the following conditions affecting the habitability of the home that the landlord knows about or *could* know about with a reasonable inspection:
 - The unit does not have hot or cold water.
 - The heat is not in safe working order or is not able to keep the living areas of the home at least 67 degrees F all year.
 - The unit does not have electricity, or the electricity is not in safe working condition.

- Any structural or other conditions that pose a substantial hazard to the health or safety of the tenant or create an unreasonable risk of personal injury.
- The unit does not have plumbing or the plumbing is not in good working condition.
- The unit's sewage system is not in good operating condition.

Wis. Stat. 704.07(2)(bm); ATCP 134.04(2)(a)-(b).

Promises to Repair Before Move In

If a landlord promises to clean, repair, or improve the unit before the tenant moves in, that promise must be made in writing, a copy must be given to the tenant, and it must specify a date by which the work will be completed. The work must be completed by the date promised unless the delay is beyond the landlord's control (e.g. labor strikes, unavailability of products, a fire, a tornado). If delayed, the landlord must provide updates to the tenant about the reason and a new date for completing the work. ATCP 134.07.

Smoke and Carbon Monoxide Detectors

Wisconsin law requires landlords to install and maintain smoke detectors in rental properties. A smoke detector is required on every floor, except in an attic or storage area level. Wis. Stat. 101.145, 101.645.

Wisconsin law also requires landlords to install and maintain carbon monoxide detectors in rental properties that have an attached garage, fireplace, or a fuel-burning appliance. If required, a carbon monoxide detector must be installed on every floor including the basement but they are not required in an attic or storage area level. Wis. Stat. 101.149, 101.647.

Landlords are required to provide any necessary maintenance on smoke and carbon monoxide detectors, including changing batteries, within 5 days of being notified by the tenant. Wis. Stat. 101.145, 101.149, 101.645, 101.647.

Local laws may have additional requirements. The City of Madison requires landlords to install smoke alarms that have 2 independent power sources or are powered by a non-replaceable, non-renewable battery that works for at least 10 years. In addition, in Madison, smoke alarms must be installed in each bedroom and sleeping area, and within 6 feet of each door leading to a bedroom or sleeping area. Landlords must also provide tenants with fire safety educational materials and have tenants sign the [Tenant & Owner Agreement](#). MGO 32.06.

Condemned Properties

Landlords are prohibited from advertising or renting a condemned property until all repairs have been completed. ATCP 134.09(1).

Prohibited Rental Agreement Provisions

Generally, an unlawful provision in a rental agreement is severed from the remainder of the agreement. But there are certain provisions that render the entire agreement void and unenforceable. (These are discussed in full in the guidance on rental agreements.)

The unlawful repair-related rental agreement provisions are those that:

- Allow a landlord to retaliate, or threaten to retaliate, against a tenant for contacting law enforcement, or health or safety services.
- State that a landlord is not liable for damages or injuries caused by the landlord.
- Impose liability on a tenant for injuries resulting from causes clearly beyond the tenant's control, or for property damage caused by natural disasters or by a person who is not a guest of the tenant or invited to the home by the tenant.
- Waive any of the landlord's obligations to maintain a fit and habitable home.

If a rental agreement contains any of the above provisions, the entire agreement is void and unenforceable. Wis. Stat. 704.44(1m), (6)-(8); ATCP 134.08(1), (6)-(8).

In addition, landlords may not retaliate against a tenant for making a good faith complaint with a public official or a building code enforcement agency about a defect in the home or the premises, complaining to the landlord about repairs or conditions in the home or premises, or exercising any right related to their tenancy. Retaliation may include increasing rent, removing or decreasing services, filing an eviction action, refusing to renew, charging additional fees, or threatening any of these actions. Wis. Stat. 704.45.

During Tenancy

Landlords and tenants have responsibilities to keep the rental unit in good repair and free of damage. If damage is caused by the tenant's actions or negligence, the tenant is responsible for covering the repair costs.

Notice Required for Landlord Entry

After the tenancy begins, the tenant has exclusive possession of the rental unit. However, landlords are entitled to enter the unit to make repairs and inspect the unit if they first provide proper written advance notice. Landlords may also enter with no

notice and “with such force as appears necessary” if the tenant is not at home and entry is necessary to protect the unit or a health or safety emergency exists. Wis. Stat. 704.05(2); ATCP 134.09(2)(b).

Under Wisconsin law, landlords are required to provide at least 12 hours written advance notice before entering unless the tenant consents to a shorter notice after being notified by the landlord about the proposed entry. For example, the landlord has complied with the law if they email the tenant that they plan to enter the unit in 5 hours to fix a sink and the tenant allows the landlord to enter at that time and make the repairs. ATCP 134.09(2).

Tenants can also agree to a shorter advance notice than the period otherwise required under the law but only if the tenant signs a nonstandard rental provision. And the provision must still require the landlord to enter at reasonable times. To be enforceable, a nonstandard rental provision must meet **all** the following requirements:

- The nonstandard rental provision must be separate from the rest of the rental agreement.
- The provision must be under the title “NONSTANDARD RENTAL PROVISIONS.”
- The landlord must separately review each nonstandard provision with the tenant, which can be shown by the tenant initialing or signing each provision.

ATCP 134.09(2)(c).

Landlords’ General Duties to Repair and Maintain

Generally, during the tenancy, landlords are required to keep the home and common areas safe, habitable, and in good repair. Specifically, under Wis. Stat. 704.07(2), landlords are required to:

- Keep in “a reasonable state of repair” all common areas, which includes hallways, laundry rooms, storage areas, parking lots, yards, basements, and other areas that are shared by 2 or more units.
- Keep in “a reasonable state of repair” all equipment the landlord furnishes such as elevators, air conditioners, and appliances.
- Make all necessary structural repairs.
- Maintain heating, plumbing, electrical systems, and other furnished equipment and machinery in reasonable working condition and in compliance with any applicable building and housing codes.
- Comply with all applicable housing and building codes.

- Housing and building codes include all “laws, ordinances, or governmental regulations concerning the construction, maintenance, habitability, operation, occupancy, use or appearance of any premises or dwelling unit.” ATCP 134.02(1).

Tenants’ General Duties to Repair and Maintain

Tenants also have duties to maintain and repair while living in the unit. Tenants are required to:

- Repair, or pay the landlord to repair, all damages caused by the tenant’s actions or inactions.
 - This includes damage caused by a guest of the tenant or someone invited into the tenant’s home.
- Perform minor maintenance to keep the plumbing, electrical, wiring, machinery, and equipment furnished with the home in reasonable working order.
 - Minor means that the cost is minor in relation to the rent. For example, changing light bulbs.
- Comply with applicable local housing codes.

Wis. Stat. 704.07(3).

If the tenant causes damage to the property, the landlord can choose how to recoup the costs. The landlord can choose to have the tenant make the necessary repairs; or make the repairs themselves and charge the tenant for the actual, reasonable costs of the repairs. Costs may include materials, labor, and reasonable hourly rates the landlord spends on purchasing materials, supervising another person who is working on repairs, and hiring a contractor for the repairs. The landlord can require the tenant pay at the time of making repairs or can deduct the cost from the security deposit. Wis. Stat. 704.07(3)(a).

Promises to Repair During Tenancy

A landlord’s promise to clean, repair, or improve the unit must specify a date by which the work will be completed. It is not required to be in writing when the promise is made during the tenancy. The work must be completed by the date promised unless the delay is beyond the landlord’s control (e.g. labor strikes, unavailability of products, a fire, or a tornado). The landlord must provide updates to the tenant about the reasons for the delay and a new date for completing the work. ATCP 134.07(1), (3).

Rent Abatement

Rent abatement means temporarily reducing the amount of rent the tenant owes to the landlord. Rent abatement may be awarded or allowed as a result of conditions that materially affect the tenant's health, safety, or use of the home and the conditions are not repaired or cannot be repaired by the landlord.

Rent Abatement Under Wisconsin Law

If there are any repair issues in a rental unit, a tenant should start by contacting their landlord in writing detailing the problems, when they started, and the repairs needed. Tenants should also ask when the repairs will be made. If the landlord does not make the necessary repairs, the tenant can contact the local building inspector if available. If the repairs are not made, the tenant may choose to stay and reduce the rent they are paying or they can move out and sue the landlord for the amount they believe they overpaid due to the home's conditions.

Wisconsin's rent abatement law is under Wis. Stat. 704.07(4). This law allows tenants to abate their rent if the conditions materially affect the tenant's health or safety, or affect the tenant's ability to fully use their home. If the rental unit is in Madison, the tenant can follow the City's rent abatement process, outlined below.

The Wisconsin law is clear on a few restrictions to abatement:

- Rent abatement is not available to the tenant if the damages or conditions are caused by the tenant.
- Rent abatement must be limited to conditions affecting health, safety, or use of the rental unit.
- A tenant may not withhold the full amount of rent if they continue to live in the home.

Otherwise, Wisconsin law does not provide a specific process for abatement or the specific amounts that may be withheld. Instead, the law states that rent may be abated "to the extent the tenant is deprived of the full normal use of the premises." This is very general and the amount that can be withheld will vary depending on the circumstances. Tenants should be careful when withholding any amount of rent because they risk an eviction for non-payment of the full amount of rent.

As an alternative to withholding rent, tenants may move out and sue the landlord for a refund of the amount of the rent that they believe should have been abated due to the home's conditions.

If the tenant moves out because the home has become untenantable, they are not responsible for rent after the home became untenantable and the landlord must repay any rent that was paid in advance for a period when the home was untenantable. The home may be untenantable due to conditions that materially affect the health or safety of the tenant and the landlord is not promptly repairing the conditions.

Again, tenants should be very careful about when they withhold rent. The tenant will need to be able to prove the home is untenantable and therefore legally justified in not paying their rent. A tenant may be able to show that the home is untenantable if, for example, they have a report from the building inspector or fire department stating that no one can live in the home due to a fire, flood, or other conditions or damage.

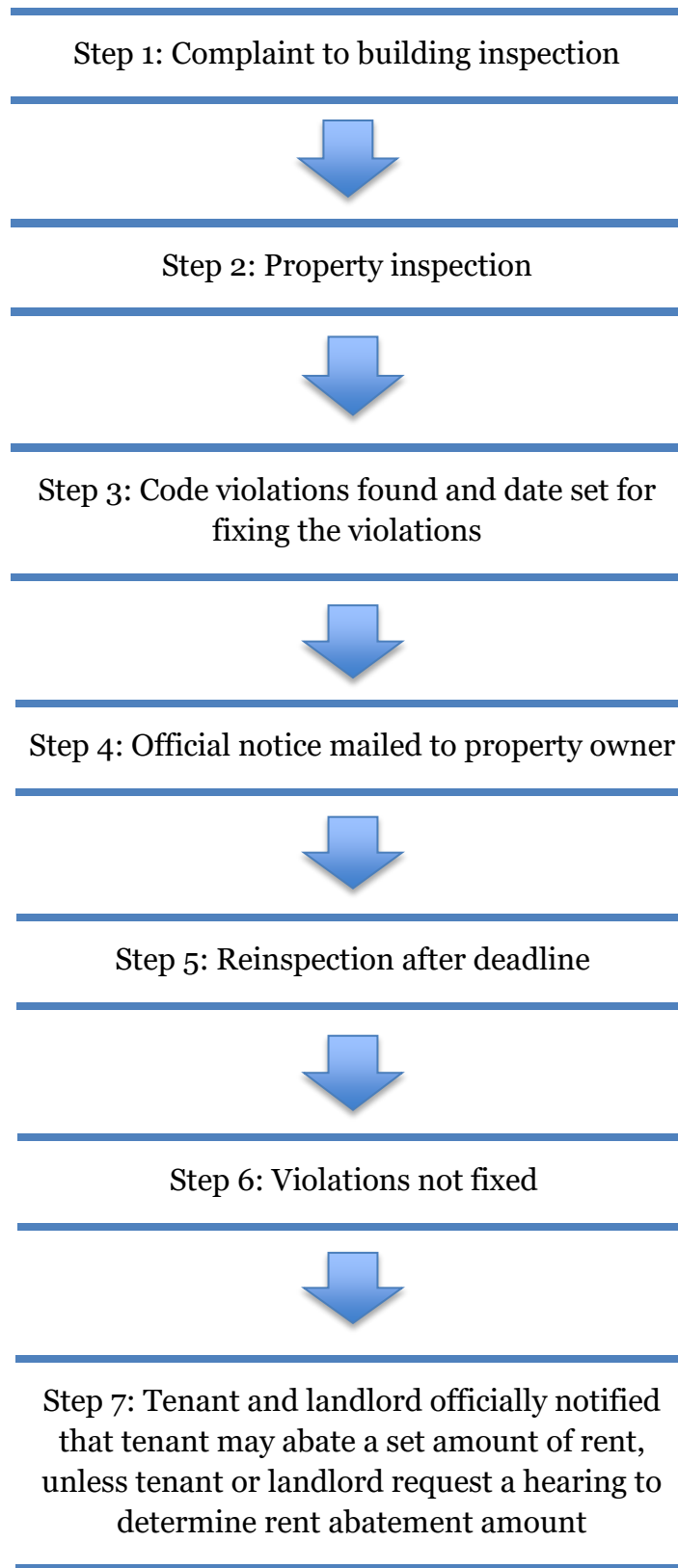
Tenants should keep records related to the conditions and repairs, including pictures, videos, communications, and receipts. Tenants should also keep records related to their costs associated with staying in temporary housing or moving out. This may include receipts for meals, hotel stays, a storage unit, or any other costs the tenant must pay because they could not stay in their home.

Rent Abatement in the City of Madison

Under MGO 32.04, tenants in Madison may be eligible for rent abatement if their landlord does not fix housing code violations by a due date set by the City of Madison's Division of Building Inspection. Madison ordinances set specific percentage amounts applicable to each type of violation. For example, a tenant is eligible for 5-10% rent reduction if a landlord does not fix lead-based paint on outside surfaces causing a health nuisance but the tenant is eligible for 10-25% rent reduction per room if the landlord does not fix lead-based paint present on surfaces inside the rental unit that are causing a health nuisance.

It is unlawful for a landlord to retaliate against a tenant for making a good faith complaint to the building inspector about the conditions in their rental unit. Retaliation is any action taken to harm the tenant because they filed a complaint. Examples include: increased rent or charging additional fees, filing an eviction, refusing to renew a lease, harassing a tenant, not making repairs, or turning off the water or electricity.

The rent abatement process in Madison:



A tenant or landlord may request a hearing within 30 days from the date the Building Inspection Division mails the official notice of uncorrected violations. Within 10 days, a hearing will be scheduled and a decision by the examiner will be issued within 20 days of the hearing.