



# TENANT

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## RESOURCE CENTER

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### Ending a Rental Agreement

A rental agreement is a contract between the landlord and tenant(s). The contract may be an oral or written agreement. A lease is a type of rental agreement that has a definite start and end date. General principles of contract law apply to rental agreements. This fact sheet outlines the particular laws that apply to ending a rental agreement.

Additional laws apply to non-renewals and terminations of manufactured home rental agreements. Please see the guidance on manufactured homes for more information.

### Applicable Laws

[Wisconsin Statutes ch. 704](#)

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

### Renewal and Non-Renewal

Unless the rental agreement contains a provision for an automatic renewal or the landlord and tenant agree to renewal, the rental agreement ends on the last day of the agreed rental period. If renewed, the terms of the original rental agreement continue to apply to the renewed agreement unless the landlord and tenant agree—verbally or in writing—about the terms that change.

There is no right to an automatic renewal unless a written rental agreement includes an automatic renewal provision. A tenant cannot be held to an automatic renewal unless the landlord gives the tenant a written reminder of the renewal at least 15 days but not more than 30 days before the automatic renewal deadline. Wis. Stat. 704.15; ATCP 134.09(3). The deadline for automatic renewal generally is earlier than the end of the lease term.

## Termination After a Breach of the Rental Agreement

For information about the requirements landlords must follow for terminating the rental agreement and potentially moving toward an eviction, see the guidance on evictions.

## Termination Without a Breach of the Rental Agreement

### *Periodic Tenancies and Tenancies at Will*

A landlord may terminate a periodic tenancy or tenancy at will for any reason, or no reason, so long as the reason is not discriminatory or in retaliation against the tenant. Wis. Stat. 704.45; ATCP 134.09(5). Federal, state and local fair housing laws provide about protection from discrimination.

A landlord or tenant may terminate a month-to-month tenancy or tenancy at will with at least 28 days notice. The 28 days must be prior to the rent payment date. Example: To end a lease on October 31, notice must be given by October 3. If notice is given on October 5, the termination is effective on the next rent payment date following 28 days after October 5, which would be November 30<sup>th</sup>.

A periodic tenancy with a rental period shorter than a month may be terminated with a notice equal to at least the rental period (e.g. the landlord must provide a week notice if the rent is paid weekly). Wis. Stat. 704.19(3).

The notice must be in writing. Wis. Stat. 704.19(4). In addition, under Wis. Stat. 704.21, the notice must be provided by one of the following methods:

- Delivering in-person to the tenant or landlord (or the person who collects rent or manages the property), or a “competent” person who is at least 14 years old and is a member of the tenant’s or landlord’s family and the person is notified what the notice is.
  - Notice is considered to be given as of the date of 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 (whether they are a family member or not) **AND** mailing a copy of the notice to the tenant at their last known address; or, if to a landlord, delivering in-person to a “competent person” apparently in charge of the property.
  - Notice is considered to be given as of the date of delivering the notice or the date the notice was mailed, whichever is later.

- If the landlord has attempted with “reasonable diligence” to provide personal notice to a tenant through one of the ways above and has not been able to, they can post the notice at the unit **AND** mail a copy of the notice to the tenant at their last known address. *This is not an option for tenants providing notice to their landlords.*
  - 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 as of the date of posting the notice or the date the notice was mailed, whichever is later.
- Mailing via certified or registered mail to the tenant’s or landlord’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 or landlord through the process under Wis. Stat. 801.11.
  - Notice is considered to be given as of the date of service of the notice.

If the notice is not given by one of the methods above BUT the other party does indeed get the notice, it is considered properly given anyway. However, it is up to the party (tenant or landlord) who served it to prove that the other party did actually get the notice and when they got it. Wis. Stat. 704.21(5).

Unlike eviction notices, the first day of the notice period is the day it is delivered or served, or 2 days after mailed. The last day of the notice period counts, unless the last day falls on a Sunday or a legal holiday. If the last day falls on a Sunday or a legal holiday, the last day is the next secular day that is not a holiday. Wis. Stat. 704.19(7); Wis. Stat. 990.001(4). Example: If a 5-day notice is served on October 7, 5 days later is October 12. The tenant must pay or cure the other default by October 12 or move on that date. The tenant has the entire day to do either one.

If a periodic tenant moves out without providing the landlord notice and does not pay rent, the tenancy is terminated as of the first date on which the rental agreement would have terminated had the landlord been given proper notice on the day the landlord discovers the tenant has moved out. Wis. Stat. 704.19(6). This is called constructive notice.

## ***Term Leases***

Unless the tenant and landlord have agreed to extend or renew the rental agreement, the general rule is that the tenant is expected to move out of the unit at the end of a lease term. There is no legal requirement that the landlord give notice to the tenant that the lease ends because the lease itself contains the start and end dates. For the same reason, there is no requirement that the tenant provides notice that they are moving out.

## ***Mutual Agreement to Terminate Early***

Similar to any contract, the landlord and tenant may amend the terms of their rental agreement if they both agree. This could include the landlord and tenant mutually agreeing to an early termination of their agreement. For example, a tenant may find a job in a different state 9 months into a 12-month lease. The tenant and landlord could agree to terminate the lease if the tenant pays the rent for months 9 and 10. This should be in writing in order to easily prove the agreement has been made. It can be agreed upon orally, without being in writing, but that makes it very hard to prove there was an agreement.

## ***Death of a Tenant***

If a tenant dies, their rental agreement terminates on the earlier of one of the following:

- 60 days after the landlord is notified, is advised, or otherwise learns the tenant died, or
- the end of the lease's term.

Note this means that the tenancy for a periodic tenant who pays monthly will terminate 60 days after the landlord learns of the tenant's death. The termination does not necessarily fall at the end of a rental period. Wis. Stat. 704.165(1).

The tenant's estate is not responsible for rent after the termination date. The landlord may collect through the probate process rent and other charges from the estate, but the landlord is still required to mitigate their damages (meaning that the landlord must try to re-rent) for that period before termination. Wis. Stat. 704.165(2); 704.29(2). The landlord cannot attempt to collect rent or other charges from the deceased tenant's family members unless they are a co-tenant, co-signer, or otherwise responsible for paying those costs. Wis. Stat. 704.165(3)-(4).

## **Termination and Military Service**

The federal Servicemembers Civil Relief Act provides protections to active duty service members. 50 USC 3901-4043. An eligible tenant who moved into a unit before they

were called to active duty is entitled to terminate their lease early if they receive orders to move for a time period lasting at least 90 days. The tenant is required to provide the notice in writing and a copy of the military orders. 50 USC §3955. The landlord is required to return their security deposit, and any other prepaid rent, less any money owed by the tenant following termination. For a month-to-month tenancy, the tenancy terminates 30 days after the next due date for the rent. For all other tenancies, the tenancy terminates on the last day of the month after the month in which the tenant gives notice.

In addition, eligible tenants may be entitled to a stay of eviction proceedings for up to three months. 50 USC §3951(b).

## Termination Due to Safety Concerns

Under Wisconsin's Safe Housing Act, a tenant may terminate their rental agreement if they or their child faces an imminent threat of serious physical harm from another person if the tenant stays in the unit. A landlord may also terminate an offending tenant's tenancy if certain requirements are met and steps followed. Wis. Stat. 704.16. For more information, see guidance on the Safe Housing Act.

## Foreclosure

A rental property foreclosure is a legal action against the owner of the property. The bank that is owed the mortgage, or an individual or company can purchase the property in foreclosure. Tenants may not know that a foreclosure has been filed on the property they are renting. Even if they find that an ownership change is happening because of a foreclosure, tenants may get lost in the legal shuffle and not know how to pay rent or who to contact when there's a repair issue, which can put their housing at risk. The federal Protecting Tenants Against Foreclosure Act (PFTA) was enacted to help protect tenants in this situation. 12 USC 5220 note.

Unless the new owner will live in the property, the PFTA requires the new owner to provide the tenant with 90 days' notice before requiring the tenant to move out, or, if the lease term extends beyond 90 days, allow the tenant to stay in the unit for the lease term. If the new owner will be living in the property, they can terminate the lease with 90 days' notice even if the lease term extends beyond 90 days.

The PFTA applies to all residential properties, including one-unit and multi-unit properties, and subsidized properties. And the law applies to tenants with any type of tenancy. Tenants with a Section 8 Housing Choice Voucher have additional rights under the PFTA. They may be able to stay in the unit under the existing lease and the new

owner is required to continue the housing assistance payment contract. Transfer of ownership after a foreclosure is not good cause for terminating a Section 8 lease.

Tenants are not covered under the PFTA if any of the following apply:

- the tenant is the person whose name is on the mortgage
- the tenant is the spouse, parent, or child of the person whose name is on the mortgage
- the rental agreement is not the result of an arm's length transaction (example: the tenant and landlord had a personal, financial, or business relationship prior to entering into the lease)
- the rent is well below market rate, unless the rent is reduced because it is subsidized

Foreclosure is not a valid reason for evicting a tenant. But a tenant can be evicted if they don't pay rent or comply with other lease terms.

## Holding Over

A tenant is considered holding over when they stay in a unit after the tenancy has ended. Wis. Stat. 704.25. At this point, the landlord has three main options: (1) enter into a new rental agreement, (2) elect to hold the tenant to a periodic tenancy, or (3) evict the tenant and recover twice the daily rent.

If the landlord and tenant decide to enter into a new agreement, they can enter into any lawful agreement. They are effectively starting over.

The second option is to let the tenancy continue without a new agreement. The landlord may elect to hold the holdover tenant to a month-to-month periodic tenancy as long as the original lease was on a term basis or a periodic basis for at least a month-to-month. If the lease was week-to-week or day-to-day, the landlord can only hold the tenant on the same periodic basis. If the landlord accepts rent after a rental period has ended or otherwise indicates they are allowing the tenant to stay in the unit, the landlord has effectively agreed to a periodic tenancy. Wis. Stat. 704.25(2). The only terms that do not carry over to a periodic tenancy created after holding over are any right by the tenant to renew or extend the lease, to purchase the unit, or to have right of first refusal. Wis. Stat. 704.25(3).

If a tenant holds over and no new lease is entered into, the landlord can move forward with an eviction action against the tenant and recover the damages resulting from the tenant holding over. The tenant will owe damages of at least twice the daily rent every day the tenant remains living in the unit. Wis. Stat. 704.27.

## Subletting

Subletting does not end a rental agreement. Subletting is when the original renter (the sublessor) remains responsible for a lease, and either lives with a sublessee, or has a sublessee take their place living in the unit. The new tenant does not replace the original tenant.

Under Wis. Stat. 704.09(1), a tenant must get the consent of the landlord to sublease when the lease requires the landlord's pre-authorization before subletting, or the tenant is a month-to-month or periodic tenant.