



UNIVERSITY LEGAL CLINIC

Tenant Rights and Responsibilities

The Basics of Renting

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Many thanks to the following organizations:

NEIGHBORHOOD HOUSING



Contents

Scope.....	1
Finding an Apartment.....	2
Cosigning a Lease.....	3
Applying for an Apartment.....	4
Moving In.....	5
Repairs.....	6
Subleases.....	7
Breaking a Lease.....	7
Eviction.....	8
Moving Out.....	9
Security Deposit.....	11
Final Disclaimer.....	12
Appendix A.....	13
Appendix B.....	14
Appendix C.....	15

Scope

Whether you're getting your first apartment or have rented before, it is always good to know your rights and responsibilities as a tenant. This publication is meant to inform.

All the information in this publication is strictly educational. It is in no way meant to replace or substitute for legal advice. If you have any questions about the content of this publication and how it may apply to your particular case you should timely seek legal counsel.

The University Legal Clinic provides this service to University of Wisconsin- Milwaukee students. If you are not a UWM student, please see Appendix A for a listing of other legal resources that may be able to assist you.

Finding an Apartment

There are many resources for finding apartments. A simple Google search will bring up hundreds of results. However, not all apartment search web-sites are created equally.

As a student at the University of Wisconsin-Milwaukee there are many services available to you. The Neighborhood Housing Office (NHO) helps students locate quality housing and landlords.

Their website is easy to navigate and has many useful features. You can search for houses, roommates, and landlord ratings. The NHO compiles lists of compliments and complaints on different landlords from students and makes that information available to the public. All of this can be accessed at the website: neighborhoodhousing.uwm.edu

The screenshot shows a 'Property Search' form with the following fields and options:

- Type of Property to search:** Radio buttons for 'Landlord Listings' (selected) and 'Student Rooms for Rent / Subleases'.
- Street Address:** A text input field.
- Area:** A dropdown menu with 'No Preference' selected.
- Unit Type:** A dropdown menu with 'No Preference' selected.
- Number of Bedrooms:** A dropdown menu with 'No Preference' selected.
- Date Available Between (MM/DD/YYYY):** Two date pickers for 'Start Date' and 'End Date', and a checkbox for 'Available Now'.
- Length of Lease:** A dropdown menu with 'No Preference' selected.
- Rent Price Range (per month):** Two input fields for 'min' and 'max' with a hyphen between them.
- Parking:** A dropdown menu with 'No Preference' selected.
- Pet Policy:** Radio buttons for 'Yes', 'No', and 'No Preference' (selected).
- Handicap Accessible:** Radio buttons for 'Yes', 'No', and 'No Preference' (selected).
- Landlord/Company Name:** A dropdown menu with 'No Preference' selected, and a checkbox for 'Other:' followed by a text input field.

At the bottom of the form, there is a 'Reset Form' link and a 'Search' button.

To the left is the Property search form on the NHO website. You can indicate the rental periods, property location, number of bedrooms, and even parking availability.

For information about the Neighborhood Housing Office or about the services that they provide, visit the website listed above or call 414-229-6999.

Most attics and basements cannot legally be used as an apartment. In Milwaukee, you also cannot have more than three (3) unrelated individuals rent an apartment.

Check Out the Landlord and Property

Also, you will want to do your homework. Don't always take the landlords word on everything. Check out the landlord. Remember that the NHO collects compliments and complaints about many eastside landlords. Also check out the landlord's record (criminal, evictions, lawsuits) at CCAP. Check out the property with the Milwaukee Department of Neighborhood Services and determine whether there are uncorrected building code violations. See appendix A for the listing of these websites

Cosigning a Lease

Choose your roommates wisely. You are “jointly and severally” liable for any damages and unpaid rent. Landlords may also require a cosigner for a lease at their discretion. There are no laws that dictate when a landlord can and cannot require a cosigner. Each landlord will have certain criteria that they use to decide whether or not they will require a cosigner for a prospective tenant.

A cosigner can be any responsible adult who is willing to take responsibility for a lease if the tenant defaults in any way. A landlord will most likely have preferences about who the cosigner should be.

Cosigning a lease for someone should not be taken lightly. When a person cosigns a lease for someone you become jointly and severally liable for all rent and damages not paid by the tenants as well as responsible for the entire debt, even if there are multiple tenants or cosigners.

Unless the landlord agrees otherwise, a person cannot cosign for just one tenant. If you cosign a lease that has multiple tenants, you have cosigned or guaranteed all of the tenants.

If the tenants default and the cosigner is pursued by the landlord, it is the cosigner’s responsibility to pursue the other tenants or cosigners for their respective monetary responsibilities. This is called a “right of contribution”. Usually rent and utility monies can be recovered through small claims legal action.

A cosigner can also be known as a guarantor.

<p style="text-align: center;">GUARANTEE</p> <p>In consideration of Landlord's agreement to rent the Premises, undersigned guarantees payment of all amounts due under this Agreement and performance of all covenants of Tenant. This Guarantee is irrevocable and is not affected by modification or extension of this Agreement.</p> <p>Signature: <u>[Signature]</u> 12/7/09 (print name) (date)</p> <p><u>123 University Way, Milwaukee WI, 53211</u> (address)</p> <p>Signature: _____</p>	<p>IN WITNESS WHEREOF, the parties have executed this Agreement</p> <p>LANDLORD/AGENT:</p> <p>Signature: <u>[Signature]</u> 12-7-09 (print name) (date)</p> <p>TENANT:</p> <p>Signature: <u>Linda Landlord</u> 12-7-09 (print name) (date)</p> <p>Signature: <u>KEVIN SCOOP</u> 12/07/09 (print name) (date)</p>
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Applying for an Apartment

Credit Check Fees¹

A landlord can charge a prospective tenant up to \$20 to perform a credit check on a rental application. However, if the tenant already has a consumer credit report that is both less than 30 days old and is from a “consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis”, the landlord is required to use that instead. You can receive one free credit report each year at www.annualcreditreport.com. Some banks also offer them for free. Credit checks do affect your credit score.

Earnest Money²

Wisconsin administrative code defines Earnest Money as money given to a landlord to hold an apartment pending acceptance of a rental application. If the prospective tenant withdraws their application before the landlord accepts it, the earnest money must be mailed or delivered by the end of the next business day.

However, if the landlord informs the tenant that their application has been accepted before withdrawal of the application, the tenant is then obligated to enter into the lease agreement. If the tenant fails to do so, the landlord may withhold the earnest money payment and possibly additional sums for lost rent.

If you did pay the landlord earnest money and you enter into a rental agreement with that landlord, the landlord has three options: return the earnest money, apply it to the security deposit, or apply it as rent. Most landlords credit the money to the security deposit for ease of accounting.

Bait and Switch³

It is unlawful for a landlord to perform what is called a “bait and switch”. A “bait and switch” is when the landlord shows prospective tenants one apartment or rental unit and then has those same tenants sign a lease for different rental unit.

Misrepresentation⁴

Wisconsin Administrative Code strictly prohibits landlords from making misrepresentations about their rental properties. No landlord may fail to disclose the rent charges or non-rent charges to be paid by the tenant during tenancy. Also, they may not misrepresent the location or characteristics of the unit.

Before Signing a Lease

Before signing any lease, it is a good idea to have the lease looked over by a professional to make sure that everything in the lease is legal and so that you are fully aware of everything that you are agreeing to when you sign the lease. The NHO can also run a background check for you or your prospective landlord and property. The landlord must advise you if the property is in foreclosure, has any uncorrected code violations, and what utilities are included in the rent.

¹ ATCP 134.05 (4) (b)

² ATCP 134.05 (1) (2) (3)

³ ATCP 134.09 (9) (b)

⁴ ATCP 134.09

Moving In

Pre-existing damage⁵

It is important when moving into an apartment or rental property, that you thoroughly inspect the premises within the first seven (7) days of moving in. Wisconsin Administration Code states that the tenant has the right to “inspect the dwelling unit and notify the landlord of any pre-existing damages or defects⁶”. Not only will the Landlord have notice to fix any defects that the apartment may have it also ensures that the tenant will not be held liable for any pre-existing damage when they move out.

The University Legal Clinic provides a useful form to record pre-existing damage. This form is available in the Legal Clinic’s office. It is important that you take pictures of any defects or damages that you indicate on the check-in sheet.

TENANT INSPECTION/ ACCEPTANCE

1 Tenant: _____
 2 Address: _____
 3 _____

4	ROOM OR AREA	MOVE-IN INSPECTION	MOVE-OUT INSPECTION	COST TO CORRECT
6	KITCHEN			
7	Walls/Ceiling	paint damage		
8	Stove-Outside	OK		
9	Burners	1 missing		
10	Burner Reflectors	NA		
11	Timer-Controls	NA		
12	Oven	Very dirty		
13	Racks	OK		
14	Broiler Pan	OK		
15	Light	OK		
16	Function	OK		

The photographs show: 1) Peeling paint on a wall. 2) A stove with one burner missing. 3) A very dirty oven interior.

The above is an example of the move-in inspection of the kitchen. The tenants took a picture of everything indicated on the sheet. Make sure you keep a copy of the pictures and the form with your lease in a safe place. You’ll need it again when you move out.

⁵ ATCP 134.06 (1)

⁶ ATCP 134.06 (1)

Repairs

Responsibility⁷

It is a well known fact that damage occurs to rental units. There is no way to avoid it. The question that remains then is who is responsible for damages? Damages caused by negligence of the tenant or the tenants' guests fall upon the tenant to repair. This doesn't necessarily mean that the tenant performs the maintenance themselves. However, it does mean that they are financially responsible for that item of damage.

All other damages that were not caused by negligence of the tenant are the landlord's responsibility to repair.

Major repairs such as heat, air conditioning, electric, or plumbing are the landlord's responsibility. Minor and inexpensive repairs, such as changing a light bulb, are the responsibility of the tenant.

Promises to Repair⁸

In accordance with Wisconsin Administrative Code a landlord's promise to repair must be in writing and have a date of completion if the promise is made prior to the lease being signed. The landlord must also notify a tenant, in writing, if there are unavoidable delays. A completion date must be given in any case.

Refusal to Repair

If a landlord refuses to make repairs tenants can contact Neighborhood Services. Complaints can be filed online at: www.ci.mil.wi.us/ComplaintProcess2387.htm. A tenant may also call Neighborhood Services at 414-286-2268. Neighborhood Services will then follow-up with the landlord and order necessary repairs. It is unlawful for the landlord to retaliate (see retaliatory eviction, page 7) against tenants for good faith complaints to Neighborhood Services.

Entering an Apartment to Make Repairs⁹

A landlord must give a tenant at least twelve (12) hours advance notice before entering an apartment to make repairs. However, a landlord may enter an apartment at anytime if they believe there is a health or safety emergency or to protect the premises from damage.



⁷ Wis. Stat. 704.07 (1) and (2)

⁸ ATCP 134.07

⁹ ATCP 134.09 (2) (c)

Subleases

Subleases¹⁰:

A sublease is a lease agreement between a tenant, a replacement tenant and, the landlord. The original tenant must get written permission from their landlord that it is permissible for them to sublet the rental unit to the replacement tenant.

In a month-to-month tenancy a tenant may sublet with the permission of the landlord. The same is applicable to year or more leases, but a landlord has the right to prohibit subleases altogether.

You should be very careful when subletting your apartment. You are still personally liable for all damages or unpaid rent for the rental unit. To prevent losses to yourself, you will want to have a carefully drafted sublease that outlines due dates and all financial obligations to be paid by the sublessee. You will also want to indicate who the checks should be made payable to, you or the landlord directly.

Breaking a Lease

Breaking leases is not something a tenant should do! Most leases are legal and binding contracts for the time period indicated in the lease. This means a tenant will be responsible for all rent money owed until the end of the lease.

However, if you do surrender (leave) the apartment before the end of your rental period, the landlord must try to mitigate or lessen the damages by trying to re-rent the apartment¹¹. Acceptable mitigation includes: advertising and placing “For Rent” signs. There is no guarantee that the landlord will be able to re-rent the apartment. In that case, you will be held responsible for rent money until the end of your lease.

Before taking any action towards breaking a lease or subletting your apartment you will want to talk to an attorney or seek legal counsel. Issues that an attorney can possibly help you with include a lease with illegal provisions pursuant to ATCP 134.08; illegal rental premises, such as with the rental of attics or basements and “rooming houses”; and unlivable rental conditions that the landlord fails to timely correct. Unless an attorney advises to the contrary, you are ultimately responsible for the rental property until the expiration of the lease agreement.

¹⁰ Wis. Stat. sec. 704.09 (1)

¹¹ Wis. Stat. sec 704.29

Eviction

An eviction can be stressful. It is also something you should not go through alone. As a reminder this section is meant to be basic information about eviction. Each eviction case differs. If you are facing an eviction seek legal counsel immediately.

Month-to-Month Tenancy¹²

In a month-to-month tenancy the landlord can give either a five (5) day or a fourteen (14) day eviction notice. A 5 day eviction notice is a notice to correct. In this case the landlord is giving you the option to correct the default(s) within five (5) days of receiving the notice. (Pay delinquent rent; stop the conduct that breached the lease agreement, etc.) A 14 day eviction notice is a notice to vacate. The landlord is unwilling to continue with the rental agreement.

Year Tenancy¹³

If a lease is a year or more the landlord must give a 5 day eviction notice first. If the tenant corrects the default, they may continue with the tenancy. However, if the tenant defaults again within twelve (12) months, the landlord can either serve a 5 day eviction notice again or serve a 14 day notice to vacate, which will require the tenant to move out whether or not they correct the default.

Retaliatory Eviction

A landlord cannot evict you in a retaliatory manner. An example of this would be that you made a good faith complaint to the Department of Neighborhood services because of a code violation in your apartment. Your landlord cannot evict you because you did so, however you must still pay your rent. In Milwaukee there is an ordinance which presumes there was retaliation if the landlord's action came within 12 months of the tenant's complaint.¹⁴

5 Day Notice To Pay Rent or Vacate	
State of Wisconsin Milwaukee County	} To: _____ _____
This notice terminates your tenancy and require you, and anyone living with you, to vacate the premises listed above within 5 days of service of this notice, unless the total amount of past due rent and other amounts are received in full by the owner or agent within the 5	

If you get one of these, seek legal counsel immediately.

Do not wait! Time is of the essence.

¹² Wis. Stat. sec. 704.17

¹³ Wis. Stat. sec. 704.17 (2)

¹⁴ Milwaukee Code of Ordinances 200-21.5 (8)

Moving Out

When you are ready to move out there are several things that you need to consider to make sure you leave your rental agreement in good standing and without any further financial ties or obligations.

Notice

In a Month-to-Month tenancy state law requires that a tenant give a landlord at least 28 days written notice that they will not be continuing tenancy¹⁵. For example, a written 28 days notice would have to be personally served on the landlord on or before October 4th in order for the tenancy to end at the end of October. If the notice was sent by certified mail, the latest it could be mailed would be October 2nd.

Leases of a year or more have specific move out dates. That date is when the lease expires. However, most lease agreements have what is called an “Automatic Lease Renewal.” It is very important that you read your lease to see if your lease contains this clause. Also be aware that many leases also have enforceable provisions which prohibit a tenant from moving during the winter months.

Automatic Lease Renewal¹⁶

An “Automatic Lease Renewal” (ALR) sets a date that you must let the landlord know if you are continuing with the lease agreement after your current lease expires or if you plan to move out. This notice must be written. The ALR date is typically 60 days from the end of the lease, but it can vary, which makes it imperative that you check your lease.

An ALR is enforceable. If you do not timely and properly give your landlord written notice your lease will automatically renew on a month-to-month, or longer, basis meaning you could be responsible for additional rent monies. See appendix C for an example of a properly formatted notice to your landlord.

A landlord is required by law to remind you if you have the ALR in your lease and at least 15 but no more than 30 days before the ALR would go into effect¹⁷. The notice must be in written form and delivered to the tenant in one of several ways including¹⁸:

1. Giving the notice to the tenant personally.
2. Leaving a copy with a competent person who is residing at the rental property and then mailing a copy to the tenant’s last known address.
3. Mailing a copy of the notice by certified mail to the tenants last known address.

¹⁵ Wis. Stat. sec. 704.19 (3)

¹⁶ Wis. Stat. sec 704.15

¹⁷ ATCP 134.09 (3)

¹⁸ Wis. Stat. sec 704.21

Similarly a tenant's notice must be in writing and be timely served on the landlord in one of the following ways¹⁹:

1. Giving the notice to the landlord personally.
2. Leaving a copy with a competent person apparently in charge of the landlord's regular place of business.
3. Sending by certified or registered mail

Move Out Inspection

Upon moving out of your apartment you should retrieve the copy of the Tenant Inspection / Acceptance form that you filled out when you moved in and do the move out portion with or without the landlord.

Again, just like when you moved in, you should take pictures of everything that you indicate on the sheet. You should try to take matching pictures to everything that you took a picture of when you moved in whether or not those items have been repaired during your tenancy. Also, if your camera supports it, have the date printed on the pictures.

Following is an example of a move out inspection and examples of corresponding pictures. Even if the items are not currently damaged or they were not damaged when you moved in, it is still a good idea to take pictures of the entire rental unit. As before use the date feature if your camera supports it.

40 BATHROOM

41	Cabinet & Vanity	OK	good
42	Water Closet/Seat	OK	good
43	Ceramic Tile/Caulk	OK	good
44	Towel Bars	OK	good
45	Faucets	OK	good
46	Walls/Ceilings	OK	good



¹⁹ Wis. Stat. sec 704.21 (2)

Security Deposit

Return²⁰

A landlord, by law, has 21 days from when the rental unit is “surrendered” to return a security deposit or provide you with a withholding statement. According to ATCP 134.06 (2) surrendered can mean several things including:

1. Last day of occupancy pursuant to the lease
2. Two days after a tenant mails a notice to the landlord that they have surrendered the premises
3. Date a tenant is evicted pursuant to a writ of restitution issued by the Court
4. The date the landlord discovers the tenant has surrendered a rental premises.

Be sure to keep the original post-marked envelope if the security deposit was returned late. You may be entitled to double your security deposit.

Withholding Statement

The withholding statement serves as an accounting of everything that the landlord keeps from the security deposit for damages or other losses incurred by the landlord for the rental property. This also has to be delivered within 21 days.

Illegal Withholdings²¹

There are two explicit examples of illegal withholdings in Wisconsin Law. They include routine carpet cleaning and painting. This does not mean that the landlord is always prohibited from withholding for carpet cleaning or painting. There is only one case in which a landlord can withhold for those items: if there is excessive damage to the carpet or walls that was caused by tenant abuse or neglect. If you feel that your landlord has made illegal withholdings, you should seek legal counsel. You may be entitled to double the illegal withholding.

Withholding Statement	
12/7/2009	
To: Joe Tenant 123 N. University Way Milwaukee WI, 53211	
Carpet Cleaning.....	\$150.00
Painting.....	\$225.00
Cleaning.....	\$100.00
Total Security Deposit.....	

If you disagree with any of the withholdings on your security deposit, you should speak with an attorney before taking any action.

²⁰ ATCP 134.06 (2)

²¹ ATCP 134.06 (3) (b) and (c)

Final Disclaimer

All information in this document is to be used for informational purposes only and is not meant to substitute for any legal advice.

As with any legal situation, you should timely seek legal counsel so that a licensed attorney can review your case and apply the laws appropriately.

There are many groups that are available to the public who are able to help you find and retain legal representation.

The University Legal Clinic is such an organization available to current students of the University of Wisconsin-Milwaukee.

If you are not a student please see Appendix A for a listing of legal aid societies in Wisconsin and more specifically in the Milwaukee area.

Appendix A

Useful Websites and Phone Numbers

State Bar of Wisconsin: General legal information including Wisconsin Statutes and Administrative Codes.

www.wisbar.com

Wisconsin Circuit Court Access: Provides access to all circuit court records including previous small claims proceedings.

<http://wcca.wicourts.gov/index.xsl>

City of Milwaukee Municipal Court: Provides access to municipal court records.

<http://query.municourt.milwaukee.gov>

Milwaukee DNS Property Data: Provides information for previous and current code violations at different addresses within Milwaukee.

<http://isweb1.ci.mil.wi.us/citygov/dns/main/propertydata/nss/bistart.html>

Coalition for Access to Legal Resources (CALR): Milwaukee area association interested in providing legal access for low income people.

www.legalhelpmilwaukee.org

University Legal Clinic	414-229-4140
Consumer Protection	414-226-1231
Emergency Shelter Hotline	866-211-3380
Fair Housing Council	414-278-1240
Housing Complaints (DNS)	414-286-2268
City Clerk/Aldersperson	414-286-2221
Zoning Codes/Building Inspection	414-286-2507
Health Department	414-286-3521
Landlord/Tenant Hotline	414-272-6952
Better Business Bureau	414-847-6000 / 800-273-1002
Low Income Taxpayer Clinic	414-229-3232
Legal Action of Wisconsin (Low income legal assistance)	414-278-7722
Legal Aid Society of Milwaukee (Low income legal assistance)	414-765-0600
State Bar Lawyer Referral Service	800-362-9082
Milwaukee Bar Lawyer Referral	414-274-6768

Appendix B

About the University Legal Clinic

The University Legal Clinic (ULC) has provided quality legal assistance to the students of UWM since 1971. The ULC is a student organization. We are staffed by 3 Executive members and about 10-15 volunteer paralegals. We also have one, part-time staff attorney.

The ULC can help students with most of their legal matters for free. The majority of our cases deal with Landlord / Tenant issues and traffic citations, but we can help with many things including:

1. Traffic Citations
2. Landlord / Tenant Issues
3. Contracts
4. Uncontested Divorce
5. Noise Violations
6. Underage Drinking Citations / Illegal Tavern Tickets

The ULC also offers college credit at UWM through its volunteer paralegal program.

If you are interested in applying for the Volunteer Paralegal Program or would like more information about the ULC, visit our website at: ulc.uwm.edu.

About the Neighborhood Housing Office

The Neighborhood Housing Office provides direct outreach and advising to help students find quality off-campus housing and roommates through education, referral, and support. They promote healthy living and social responsibility to connect students with UW-Milwaukee and the surrounding neighborhoods.

Properties listed on the Neighborhood Housing Office website or registered for campus events are not inspected or approved by the university. The Neighborhood Housing Office does not operate as a real estate agent or show any specific rental units. They provide quality tools and strategies to make your neighborhood housing living experience a success.

Appendix C

Sample Notice of Terminating Tenancy

Re: _____ (“Rental Premises”)

From: _____ (“Tenants”)

Date: _____

DELIVERED VIA CERTIFIED MAIL

To: _____ (“Landlord”)

In accordance with Wisconsin State Statutes Chapter 704.21 this will serve as tenants’ notice that their tenancy with the Landlord at the Rental Premises will terminate on _____ (Last day of Lease) and tenants will be vacating the Rental Premises on that date. Tenants will not be renewing or extending the existing lease or be entering into a new lease with the Landlord for the Rental Premises.

Please find Tenants’ forwarding addresses below for the purpose of returning the security deposit.

Dated: _____ Signed: _____

Dated: _____ Signed: _____

Dated: _____ Signed: _____

