



Legal Questions About Wills & Estate Planning

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Answering your legal questions about landlord/tenant law

**What are a tenant's rights? What are the landlord's rights?
How are security deposits handled?**

Rental relationships involve expectations on both sides. As a landlord, you've made a sizable investment, and you expect the tenant to treat the premises with care and pay rent on time. As a tenant, you expect the landlord to provide a livable, safe home in return for the rent you pay. Whether you're a landlord or a tenant, it's important that you understand the legalities involved. This brochure looks at common questions you may have.

When do I need a written lease?

A lease is a contract that defines the rights and responsibilities of both the landlord and the tenant. A lease can be oral or written. If a lease is for one year or less, an oral lease is as binding on both parties as a written lease. But the terms of an oral lease may be difficult to prove. A written lease helps avoid misunderstandings between the landlord and the tenant.

A lease for longer than one year must be in writing to be enforceable on both parties. A written lease must provide certain information and contain provisions set forth in the state statutes.

Whether a lease is oral or written, the landlord must give the tenant, in writing, the names and addresses of the premises' owner(s) and authorized agents, such as a building manager. There is one exception to this disclosure requirement. If the owner occupies the premises – and the premises have four or fewer dwelling units – no such written disclosure is required.

If there is no written lease, how do I give notice to terminate a tenancy?

When a tenant with no written lease pays rent on a monthly basis, the tenant and the landlord must meet two requirements in terminating tenancy. First, the notice must be in writing. Second, you must give notice at least 28 days before the end of the rent-paying period.

Say you're a tenant who pays rent on the first of the month. The end of the rent-paying period is the last day of the month. In December, that would be the 31st, so you'd need to give notice by December 3 if you plan to move out by January 1. In April, the last day would be the 30th, so you'd have to give notice by April 2, and so on.

A common mistake tenants make is to believe that all they must do is give at least 28 days notice, period. This is

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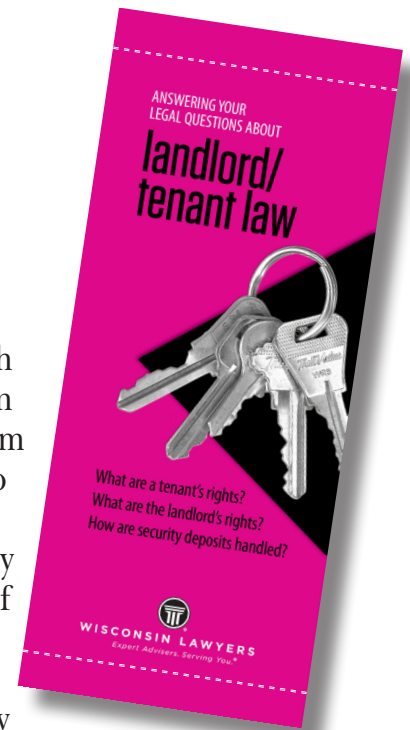
incorrect. You must give notice at least 28 days *before the end of your rent-paying period*. In other words, if you pay rent on the first of the month, you can't try to avoid paying half of April's rent by giving notice on March 15 that you'll be leaving April 15. You'd still be responsible for all of April's rent.

When a tenant with no written lease pays rent on a less than monthly basis, the tenant and the landlord again must meet two requirements. The notice must be in writing. And it must be at least equal to the rent-paying period. Say you're a tenant who pays rent each Friday. If you want to move out Friday, April 19, you must give notice no later than the end of the day on Friday, April 12.

If there is a written lease, do I need to give notice about terminating tenancy?

A written lease usually specifies an expiration date. The lease ends and the tenancy terminates on that date. Neither the landlord nor the tenant needs to give notice about termination – unless the lease specifically requires it.

Be aware, however, of special concerns with written month-to-month leases. The lease may state that the expiration date is "the last day of the month," but it doesn't state which month. In this case, the same rules apply for giving notice as for oral leases (see above). That is, you must give notice at least 28 days before the end of the rent-paying period – unless the lease states otherwise.



How does a landlord terminate a tenancy for nonpayment of rent?

When the tenant pays rent monthly, the landlord has two options. These apply whether the lease is in writing or not. First, the landlord can give the tenant a notice stating that the tenant must either pay or leave within five days.

If the tenant pays within five days, he or she can continue to live on the premises. If the tenant doesn't pay within five days, the landlord can begin eviction proceedings (more on evictions later).

The second action the landlord can take is to give the tenant notice to leave within 14 days. This 14-day notice doesn't give the tenant the right to pay to be able to stay. To give this kind of notice, the landlord (or someone acting on the landlord's behalf) usually takes one of two actions.

The landlord might deliver a written or printed notice to the tenant, or to a member of the tenant's family who is at least 14 years old, and who is told of the contents of the notice. Or the landlord might send the notice, by registered or certified mail, to the tenant at the tenant's last known address.

The above two actions are the most common ways to give a 14-day notice. But the landlord also could choose to:

- leave the notice with any competent person apparently in charge of the rented premises, and also mail a copy by regular or other mail to the tenant's last known address;
- serve the tenant with the notice as one would serve a summons (more about a summons later); or
- affix the notice in a conspicuous place on the rented premises, and mail a copy by regular or other mail to the tenant's last known address – *if* the landlord could not, with reasonable effort, give the notice to the tenant personally, or to a competent member of the tenant's family, or to a competent person apparently in charge of the rented premises.

When can a tenant sublet or assign a lease?

For tenancies of a year or less, the tenant must get the landlord's consent before subletting the leased premises or assigning a lease to another person. This rule applies even if there is no written lease. For longer tenancies, a lease may be freely assigned or the premises sublet unless the lease expressly prohibits or restricts that right.

A tenant who subleases or assigns a lease to someone else usually remains responsible for rent payments and property damage – unless the landlord releases the original tenant from those responsibilities.

When can a landlord enter the premises?

The landlord can enter at reasonable times to inspect the premises, make repairs, or show the premises to prospective tenants. The landlord usually must give 12 hours notice before entry, unless immediate entry is necessary to

preserve or protect the premises, such as in case of a fire or a burst water pipe. If the landlord gives the required notice, the tenant can't refuse entry.

Any other entry by the landlord may be trespassing. The tenant can file a claim with the Wisconsin Department of Agriculture, Trade and Consumer Protection. Another option is to pursue criminal charges against the landlord.

What can a tenant do if the landlord refuses to make repairs?

The landlord must keep the premises in a reasonable state of repair. If the cost of the repair is minor in relation to the rent, however, the tenant may be responsible for fixing the problem. The tenant also must pay for any damage or negligence he or she caused.

Report building code violations to your local building inspector. Your landlord can't evict you for reporting such violations. If conditions are so bad that the premises are uninhabitable, you can take the landlord to court. Or you can move out and avoid paying further rent. See an attorney for more information.

How does a landlord legally evict a tenant?

The landlord needs to file a summons and complaint. The summons requires that the tenant appear in court on a specific date, at a specific time. The complaint states the landlord's claim. Usually both the summons and complaint are combined on one form, available at your county clerk of court office.

The landlord fills out both parts of the document and files it with the court. A copy is then served on the tenant. The process of serving the document varies by county. In some counties, the court mails the document to the tenant's last known address. In other counties, the landlord must hire a process server or law enforcement officer to deliver the document personally to the tenant. Check with your county clerk of court about local procedures.

In court, the landlord explains his or her complaint to a judge, and the tenant responds. After hearing both sides, the judge may issue a court order requiring the tenant to vacate the premises. If the tenant refuses to leave, the county sheriff will remove the tenant and his or her belongings. The sheriff may require the landlord to pay a bond, or a money deposit, to cover the county's costs.

Can a landlord evict a tenant for selling drugs or engaging in gang activity on the premises?

Yes, the landlord can evict the tenant if the landlord has received written notice about such activities from a law enforcement agency. To evict the tenant, the landlord must give the tenant five days notice to vacate the premises.

Can a landlord evict a tenant in winter?

Yes. The time of year has no legal effect on eviction. But some circumstances may affect eviction proceedings. For instance, special requirements may apply to tenants of federally subsidized housing and housing for the elderly.

If I'm elderly, pregnant, or handicapped, can I use that as a defense in an eviction action?

Usually not. But a judge will consider such circumstances.

When can a landlord refuse to return a security deposit?

The landlord has a right to withhold a security deposit for any of several reasons, such as if the tenant:

- damaged the premises beyond ordinary wear and tear;
- caused waste or neglect of the premises (such as leaving hot water running in the bathtub for days);
- didn't pay rent;
- didn't pay for utility services, whether the landlord provided these or the tenant paid the utility companies directly; or
- didn't pay mobile home parking fees that the local government assessed against the tenant.

The landlord must give reasons in writing for refusing to return all or part of the security deposit. State law requires the landlord to provide this information within 21 days of the tenant vacating. The tenant must give the landlord his or her new address.

What action can a tenant take if a landlord withholds the security deposit?

Say that 21 days go by since the tenant vacated the premises, and the landlord still hasn't returned the security deposit or provided written reasons for withholding all or part of it. Then the tenant can take the landlord to small claims court. What's more, the tenant can ask the court to double the security deposit amount, as a penalty for not meeting the 21-day time limit.

The landlord may provide, within the 21-day time frame, written reasons for withholding all or part of the security deposit. But the tenant may disagree with the landlord's decision. Here, too, the tenant can take the landlord to small claims court to try to recover the deposit. The court may decide the landlord owes the tenant money. But, unlike in the above example, unless the court determines that the landlord falsified or misrepresented its damages, the court won't require the landlord to pay double the security deposit (or the portion improperly withheld). If the court decides that the landlord improperly withheld all or a portion of the security deposit, the court must award a tenant who has retained an attorney the reasonable cost of the attorney's services."

Can a tenant lose ownership of personal property left behind after termination of tenancy?

Unless there's a written agreement to the contrary, a landlord can take various actions in this situation.

The landlord can store the tenant's personal property, with a lien against that property. That means the tenant would have to pay any charges for removing and storing the property. The landlord must give the tenant written notice within 10 days after the charges begin.

The landlord also can give the tenant notice of the intent to sell the property, if the tenant doesn't claim it within 30 days. The proceeds of the sale would go to the tenant, minus any costs the landlord had for storage, holding the sale, and so on. If the tenant doesn't claim the sale proceeds within 60 days, the landlord must send the balance of the proceeds to the State Department of Administration for deposit.

Another option is for the landlord to store the tenant's personal property without a lien and later return the property to the tenant.

Where can I find Wisconsin's landlord-tenant law?

You can get a copy of the laws and "The Wisconsin Way: A Guide for Landlords and Tenants" from the Wisconsin Department of Agriculture, Trade and Consumer Protection. Call toll free at (800) 422-7128. Other information is available at www.datcp.wi.gov. Your public library also has copies of the Wisconsin Statutes. Check the index under "Landlord and Tenant." Additional information is available at the State Bar of Wisconsin's website at www.wisbar.org.

This is one in a series of consumer information pamphlets published by the State Bar of Wisconsin. Bulk print copies and display racks also are available, for a charge, by contacting the State Bar of Wisconsin.

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