

LANDLORD AND TENANT PROPERTY RIGHTS

TENANTS RIGHTS DURING LEASE

While a tenant is living in a unit, as a general rule the landlord cannot do anything to the tenant's property unless one of the following apply, and the landlord follows all the rules:

LANDLORD LIEN RIGHTS ON TENANT PROPERTY

A landlord can take out a "lien" on the tenant's property (hold it as collateral until the tenant pays a bill, or take the property instead of a payment) only if the tenant agreed to this in a NONSTANDARD RENTAL PROVISION, which is part of the lease. This agreement has to be on a separate piece of paper, initialed or signed by the tenant when they signed the lease. Wis. Stats. 704.11, ATCP 134.09(4)

VEHICLES PARKED ON PRIVATE RENTAL PROPERTY

As of 7/1/14, landlords will have new rights to tow unauthorized vehicles from the rental property. What the landlord can do depends on whether they post a sign prohibiting unauthorized vehicles:

If they properly post a sign, the landlord can immediately tow unauthorized vehicles at the owner's expense without notice or having them ticketed, including an unfamiliar vehicle that a tenant parked legally (for example, if the tenant is given a spot to use however they want to, and a borrowed or visiting vehicle is parked there). Wis. Stats. 349.13(3)(c), 2013 Wis. Act 76, Sec. 6 (7/1/14)

If they don't properly post a sign, the landlord must have the vehicle ticketed before towing at the owner's expense. Wis. Stats. 349.13(3m)(d), 2013 Wis. Act 76, Sec. 5 (7/1/14)

In either case: The landlord must use a towing service, and that service must notify law enforcement of the make, model, VIN, and license plate number, or they may not collect any fees. If the car is stolen, they may not tow it. They can impound the car until the fees are paid. If requested by a property owner or agent, or a law enforcement or traffic/parking official, the towing company must release the personal property in the vehicle during regular business hours upon presentation of proper identification. If the fees are not paid (or a written agreement entered into) within 30 days, the vehicle can be considered abandoned and disposed of. Municipal administrative fees (if allowed) are limited to \$35.

The Wisconsin Department of Transportation shall create rules about reasonable charges for removal and storage of vehicles, the notices that must be posted, and guidelines about

notifying law enforcement agencies. This change goes into effect 7/1/14 so the department can adopt additional rules. Wis. Stat. 349.13, 2013 Wis. Act 76, Secs. 6, 7, 8 & 59.

NOTE: If you park a new, borrowed, or rented vehicle on the property, or let someone else use your spot, or if there is a new manager who might not be familiar with your vehicle, contact the landlord immediately (in writing) with a detailed description of the vehicle, to avoid being towed.

TENANT FIXTURES

If a tenant installs a fixture like shelving, a ceiling fan, or a grab-bar, and that tenant leaves it behind when they move out, the fixture becomes the landlord's property. Wis. Stat. 704.05(4) If the landlord doesn't want the fixtures, they have the right to charge the tenant for the cost of removing them and restoring the property to its former condition. Tenants must get the landlord's permission to install fixtures. This should be in writing, with copies for everyone.

PROPERTY IN COMMON AREAS / BUILDING CODE VIOLATIONS

Landlords often put rules in the lease that tenants can't store property in common areas (bicycles in hallways, couches on porches, etc.) and there are state and local ordinances against blocking passageways or otherwise causing fire hazards. Sometimes a landlord may only want a tenant to move their property temporarily, for example so the landlord can do a pest control treatment. If the landlord has a written rule in the lease, or is under orders from a building/fire/public health inspector, they can make the tenant move their property. This should be done in writing, either as a simple request or possibly as an eviction notice if the tenant is violating the lease or an ordinance. The landlord cannot just throw away or confiscate the tenant's property! In an emergency situation, like a blocked passageway, the landlord can move the tenant's property and inform them where it's being stored. Landlords have the right to store their own property in common areas.

WHAT IF THE LANDLORD BREAKS THESE RULES?

If a landlord illegally confiscates your property while you're living in the unit, you have several options:

1. Make a written request for them to return your property or give you access to it, and cite the relevant statutes and ordinances. Give a deadline and keep a copy for yourself. You may also threaten to take further action (see below) if they don't comply.

2. File a complaint with WI Consumer Protection online or by calling (800) 422-7128.

3. File in small claims court for either a replevin (return of property) or money damages case. For example, a tenant could demand that furniture removed from a balcony be returned to you, or if the landlord has your vehicle towed without notice, and they did not properly post the property (7/1/14), you can demand they pay to have the vehicle returned, or that they reimburse you for your costs getting it back. For money damages, you can sue for double what it cost you, plus court costs and reasonable attorney's fees, under ATCP 134 and Wis. Stat. 100.20(5).

PROPERTY LEFT BEHIND BY TENANT

There are different rules for property left behind in a court-ordered eviction, and property left behind when a lease ends or if the tenant moves early for any reason. Exception For Medical Equipment/Prescriptions: None of these rules apply to prescription medication and medical equipment. A landlord must always store these for at least 7 days, and return them promptly when the tenant asks, no matter what. Wis. Stats. 704.05(am)

TENANT PROPERTY LEFT BEHIND BUT NOT DURING EVICTION

For Leases Signed/Renewed BEFORE 3/31/12:

If a tenant left property behind after moving out, the landlord had to move their stuff and/or store it, even if they thought it was trash. Within 10 days they had to tell the tenant where their stuff was being stored and if there were any charges for moving/storing it, and/or they had to give 30 days' notice to throw it away. They could only make the tenant pay for moving/storing costs (not unpaid rent, etc.) before getting their stuff back. It was illegal to put anything else in the lease. Wis. Stats. 704.05 (archived 2009 version)

For Leases Signed/Renewed ON OR AFTER 3/31/12:

If the landlord wrote in the lease (or renewal) that they won't move and/or store property left behind, the landlord can do anything they want with the property when the tenant moves (throw it away, sell it for a profit, give it to charity, etc.). If the lease doesn't say anything about property left behind, the landlord must follow the old rules listed above. If the lease says something else about dealing with the property, the landlord must follow that. It is illegal for a landlord to change this rule in the middle of a lease without the tenant's permission. Wis. Stat. 704.05, 2011 Wis. Act 143, Sec. 5 - 15 (3/31/12)

THE MYTH OF THE "ABANDONED APARTMENT"

Many landlords will try to declare an apartment "abandoned" if the tenant is gone for a certain period of time, and treat their property as "abandoned." This is extremely risky, and could be considered an illegal eviction. There are any number of reasons a tenant might

suddenly be gone (death in the family, going to the hospital, vacation, or to jail, etc.) but unless the landlord has a court order for eviction, the tenant has a right to keep their property in that unit. Tenants could sue for double damages, court costs, and reasonable attorney's fees for illegal eviction. ATCP 134.09(7) Landlords should be careful, and either evict the tenant for a lease violation (such as nonpayment of rent during their absence), end their lease through other means (28-day non-renewal of a periodic tenancy, etc.), or contact the tenant and get written permission to deal with the property.

TENANT PROPERTY LEFT BEHIND DURING EVICTION

For evictions filed before 3/1/14, the landlord must arrange with the sheriff to move and store any property left behind. Only the sheriff can decide if something is trash to be thrown away. The sheriff must tell you within 10 days where your property is being stored and how much it costs, and give 30 days' notice to throw it out. Only the sheriff has the authority to remove the tenant or their property. In Milwaukee County, the landlord must hire bonded movers; in other counties, landlords can choose to purchase their own bond of insurance. Wis. Stats. 799.45(2) & (3)

For evictions filed ON OR AFTER 3/1/14, there are two options.

1) If the landlord wrote in the lease that they won't move and store property left behind, the landlord can do anything they want with property in an eviction, without involving the sheriff, but they must notify the sheriff that they're doing it themselves. The sheriff must still be there to remove the tenant from the property.

2) If the lease doesn't say anything about property left behind, the landlord has to follow the old rules listed above for evictions. If it says something specific about how they will deal with the property, they must do that. It is illegal for a landlord to change this rule in the middle of a lease without the tenant's permission. Wis. Stats. 799.45(3m), 2013 Wis. Act 76, Sec. 40 - 57 (3/1/14)

NOTE: As of 3/1/14, tenants are at greater risk for being evicted without knowing it, or not having a chance to move out before the landlord throws their things away. It is more important than ever to check your lease and communicate in writing with your landlord any time there's a problem that could go to eviction court.

WHAT SHOULD A TENANT LOOK FOR IN A LEASE?

Language that explains what a landlord will do with property left behind: If a landlord writes into a lease that they will not store property that is left behind, the landlord can do anything they want with that property in an eviction or when the tenant moves out. Wis. Stat. 704.05(5)(bm)

A lien on your property in a NONSTANDARD RENTAL PROVISION: If the tenant initials a clause in a NONSTANDARD RENTAL PROVISION that allows a landlord to keep the tenant's property in exchange for unpaid rent or as collateral until they pay rent, the landlord has the right to do whatever that agreement says. ATCP 134.09(4)(b)

WHAT IF A LANDLORD BROKE THESE LAWS AFTER A TENANT MOVED OUT?

Any time a landlord breaks the law about property left behind, the tenant has several options:

- Call the police or sheriff to report an illegal eviction, for example if the landlord throws your things away (or threatens to throw them away) without a court order, or without the assistance of the sheriff. ATCP 134.09(7), Wis. Stats. 799.45(3m), 2013 Wis. Act 76, Sec. 40 – 57 (3/1/14)
- Make a written request for them to return your property or give you access to it, and cite the relevant statutes and ordinances. Give a deadline and keep a copy for yourself. You may also threaten to take further action (see below) if they don't comply. File a complaint with Consumer Protection online or by calling (800) 422-7128.
- File in small claims court for either a replevin (return of property) or money damages case. For example, you could demand that furniture removed from a balcony be returned to you, or if the landlord has your vehicle towed without notice, and they did not properly post the property (7/1/14), you can demand they either pay to have the vehicle returned, or reimburse you for your costs getting it back.

NOTE: If the landlord broke laws against illegal eviction under ATCP 134.09(7), or the requirement of a NONSTANDARD RENTAL PROVISION for a landlord lien under ATCP 134.09(4), the tenant can sue for double their damages plus court costs and reasonable attorney's fees, and/or file a complaint with Consumer Protection online or by calling (800) 422-7128.

SOURCE: Tenant Resource Center - Madison, WI
Wisconsin Statutes - Chapters 704 & 799
WI Dept. of Agriculture, Trade & Consumer Protection