

Wisconsin's Landlord/Tenant Laws Receive (Yet Another) Update

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Wisconsin's landlord/tenant laws have received much attention over the last two years as sweeping legislative changes have forced landlords to review the way they do business. 2013 Wis. Act 76 ("Act 76") is the newest round of legislation in this area. Passed at the end of last year, Act 76 took effect on March 1, 2014. Among other things, this law made significant changes to the eviction process, lessened some of the administrative hassles involved in removing property left by a tenant and lease execution, and implemented additional mandatory lease language. Most of these updates are being classified as "landlord-friendly", which may take some of the sting out of having to implement new leasing practices yet again. However, with new leasing language requirements, most residential landlords will need to update their lease agreements. Below is a summary of the more substantive provisions of this law:

Eviction Process

Act 76 updates many provisions of the judicial eviction process, most of which are seen as heavily favorable to landlords. Some of the more significant changes made by Act 76 include:

- shortening the return date for an eviction summons to not less than 5 days nor more than 25 days from the issue date;
- allowing circuit courts to permit the service of summons by mail rather than requiring personal or substituted service;
- where the tenant claims a defense to the eviction, requiring the courts to hold and complete a court or jury trial within 30 days of the return date of the summons (unless the parties agree otherwise);
- allowing a landlord to continue eviction even after accepting past due rent or any other payment from a tenant;
- allowing a landlord to dispose of personal property left by a tenant when a tenant is evicted, provided proper notice is given to the tenant when the tenant enters into or renews a lease; and
- allowing a landlord or its agent to oversee the removal and disposal of property left behind by a tenant after the writ of restitution is issued, rather than requiring that a sheriff do so.

Property Removal

Act 76 allows immediate removal of unauthorized vehicles parked on private property if there is a clearly visible notice that states the property is private and that vehicles not authorized to park may be immediately removed. In such case, the property owner no longer has to wait for a parking ticket to be issued before towing the vehicle. If proper signage is not present, the property owner may have the vehicle ticketed and then towed. Any such towing will be at the expense of the vehicle's owner.

Act 76 expands the rights previously granted to landlords regarding the removal of personal property left behind by a tenant. Landlords are not required to store personal property after the expiration or termination of the lease if a written notice is given to the tenant. Act 76 expands this right to apply to property left behind after an eviction as well. Also, Act 76 eliminates the requirement that landlords give tenants notice of their intent to dispose of a tenant's abandoned property at both the initial lease signing and upon renewal of the lease. Landlords may now provide notice of their intent to dispose of such property either when a tenant enters into the lease or when the lease is renewed.

Domestic Abuse Notice

All residential leases must include the notice of domestic abuse protections that is set forth in Wis. Stat. § 704.14. In short, this notice is a summary of rights a tenant has to terminate a lease or defend an eviction action in instances of domestic abuse. The required language must be included in any residential lease entered into or renewed after March 1, 2014.

Check-In Sheets

Before Act 76, landlords were required to describe the current condition of the premises in a check-in sheet that was to be provided to tenants upon commencement of the lease. Act 76 removes this requirement. Now, landlords must only provide a check-in sheet to tenants when occupancy commences, which does not need to be filled out by the landlord, and tenants have 7 days to complete and return the check-in sheet to the landlord. This is a welcome fix for many landlords who were administratively burdened by the requirements of the previous law.

Tenant Responsibility for Damage

Act 76 potentially broadens tenant liability for damages occurring during the lease term by removing the requirement that such damage be due to a tenant's "negligence or improper use of the premises" and requiring only that such damage be due to the "acts or inaction" of a tenant. Tenant liability seems to be further expanded by Act 76 as it specifically references damage caused by infestation of insects and pests due to the tenant's acts or inaction.

Time will tell how courts will interpret this new language and just how far tenant liability will be expanded.

Security Deposits

Act 76 modifies the timing for when a landlord must return a security deposit paid by a tenant (less any authorized withholdings) when a tenant vacates the premises or is evicted before the termination date of the lease, and when a tenant vacates the premises or is evicted after the termination date of the lease.

	When Landlord Must Return Security Deposit:
Tenant vacates premises or is evicted BEFORE lease termination date	21 days after the date tenant's lease terminates or if landlord re-rents the premises before the tenant's lease terminates, 21 days after the date when the new tenant's tenancy begins

Tenant vacates premises or is evicted AFTER lease termination date	21 days after the date when landlord learns that the tenant has vacated the premises or 21 days after the date that the tenant has been removed from the premises by either the landlord, landlord's agent or the sheriff
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A landlord may include "Nonstandard Rental Provisions" in a lease which authorize the landlord to withhold amounts from a tenant's security deposit above and beyond the allowed statutory withholdings. Previously, a landlord was required to specifically identify and discuss each Nonstandard Rental Provision with a tenant before the tenant signed the lease. Now, under Act 76, a landlord only needs to identify each Nonstandard Rental Provision for the tenant before the tenant signs the lease. The new law presumes that when the tenant signs (or places initials next to) each Nonstandard Rental Provision, the landlord has identified each Nonstandard Rental Provision for the tenant and the tenant has agreed to each such provision.

Double Damages

Previous legislation made the violation of any provision of Chapter 704 a potential unfair trade practice for which double damages, court costs and attorneys' fees could be sought. Act 76 now limits such claims to only those dealing with security deposit issues and illegal lease clauses.

Tenant References

Act 76 creates a new law that defines "reference" and that provides immunity from all civil liability for landlords who provide tenant references in good faith. A landlord who provides a tenant reference is presumed to be acting in good faith unless there is clear and convincing evidence that the landlord knowingly provided false information or that the landlord made the reference maliciously.

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In light of these and other changes made by Act 76, landlords should re-familiarize themselves with the provisions of Wisconsin's landlord/tenant law and, where appropriate, contact their real estate attorney to discuss what updates need to be made to their leasing documents and practices.

Please note: This *Legal Update* only discusses certain and specific aspects of Act 76; this is not a comprehensive overview of Act 76.

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