

- Include a note to your landlord with your partial rent payment, explaining why you are withholding rent. Mention that you have the money in an escrow account and that you will pay in full when your landlord has made the necessary repairs. Keep a copy for yourself.

- After your landlord makes the repairs, release the withheld rent to him or her.

- **Move out because of constructive eviction.**

Constructive eviction is what happens when repairs are needed so badly that the rental unit becomes uninhabitable. To be successful, there must be a severe health or safety hazard, the tenant must give the landlord a reasonable amount of time to repair the problem, and then if it is not repaired the tenant may constructively evict. Fire and floods are good examples of when someone may have to constructively evict.

This involves risk on the part of the tenant. If a tenant can successfully claim constructive eviction, the tenant is no longer responsible under the rental agreement and may move out. If a tenant tries to claim constructive eviction but is not successful, the tenant may be liable for rent to the end of the rental agreement plus any legal fees but the landlord will have to mitigate their damages [Wis. Stats. 704.29, ATCP 134.08(2)].

To improve your chances of successfully claiming constructive eviction, have the repair problems, your requests to the landlord, and the overall condition of the rental unit well documented. Send your landlord notice in writing that you are leaving because the rental unit has become uninhabitable. Keep track of all the expenses you must pay because you had to leave (motels, eating out, etc.). Even if a court eventually decides that you were not constructively evicted, the landlord still has a duty to try to find a new tenant for your old rental unit (see our Ending Your Lease brochure). [Wis. Stats. 704.07(4), MGO 32.13(4), MGO 32.13(2)(c), FO 72-163(c), FO 72-165]

- **Call Consumer Protection.** Consumer Protection laws require landlords to follow through on repair promises. If your landlord made a written or verbal promise to make a repair but has not followed through, you may file a complaint with Consumer Protection by calling (608) 224-4953 or (800) 422-7128. If the landlord never made the promise in writing, then you should send the agency copies of your letters to the landlord referring to the landlord's verbal promise. Your letters may be good evidence, especially if the landlord never wrote back to deny the promise was made.

Landlord Entry

In Madison and Fitchburg landlords are required to give 24 hours notice before entering a rental property **for repairs or to inspect. (Note: the landlord only has to give 12 hours notice to show the apartment.)** [MGO 32.05(1)(d), FO 72-29(4)] You can agree to let your landlord enter sooner than that to make the repairs more quickly. This is a one-time exception and the landlord still needs to give proper notice the next time. In some cases, tenants may have signed a NONSTANDARD RENTAL PROVISION that modifies state law regarding landlord entry. Check your lease for any such clauses. **In the City of Madison & Fitchburg these are illegal.** [MGO 32.02(1)(c), FO 72-4. & 72-29(4)]

Useful Phone Numbers

Building Inspection

Fitchburg (608) 270-4240
 City of Madison (608) 266-4551

Emergency Utility Numbers

Madison Gas & Electric
 (608) 252-7111 or (800) 245-1123

WE Energy
 (800) 261-LEAK

Wisconsin Power & Light Co (Alliant)
 (800) 862-6263 (gas & water)
 (800) 862-6261 (electricity & power outage)

Wisconsin Public Service Corp.
 (800) 450-7280 (gas)
 (800) 450-7240 (electricity)

Xcel Energy
 (800) 895-1999 (electricity)
 (800) 895-2999 (gas)

Fitchburg residents
 (608) 270-4279

Other Statewide Resources

Consumer Protection
 (608) 224-4953 or (800) 422-7128

Asbestos and Lead: Dept. of Health and Family Serv
 (608) 261-6876

Wisconsin Radon Information Centers
 (888) 569-7236

Bat Conservation Corps of Wisconsin
 (608) 837-BATS (2287)

Other Dane Co. Building Inspection

Town of Madison	210-7261
McFarland	838-3154
City of Middleton	827-1070
Town of Middleton	833-4346
Monona	222-2525
Mt. Horeb	437-7884
Stoughton	873-7626
Sun Prairie	825-1184
Verona	845-6695
Waunakee	849-5613

Note: The state building inspection unit, (608) 266-3151, may be able to help tenants in areas not served by municipal inspectors. They have limited enforcement ability and will charge for inspections. If you live in an area without a building inspector, you can also try calling a health or fire inspector. Please see our statewide repair brochure for more information.

Vocabulary

Earnest money Any money an applicant gives a landlord before the application is accepted or denied.

Rent abatement To permanently deduct money from rent due to a reduction in value of the apartment.

Rent withholding To temporarily keep all or part of the rent until repairs are made. Rent eventually gets paid in full to the landlord.

Escrow Account A bank account for money that is being withheld by a tenant until the landlord makes certain repairs.

Constructive Eviction An in-court defense to use when a tenant moved out of a rental unit because it became uninhabitable.



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The **Tenant Resource Center** is a non-profit, membership organization dedicated to promoting positive relations between rental housing consumers and providers throughout Wisconsin. By providing information and referrals, education about rental rights and responsibilities, and access to conflict resolution, we empower the community to obtain and maintain quality affordable housing.

Repairs in Fitchburg & the City of Madison



Tenant Resource Center

1202 Williamson St. #102, Madison, WI 53703
 9:00 a.m. – 6:00 p.m., Monday – Friday
www.tenantresourcecenter.org

Rental Rights (608) 257-0006
asktrc@tenantresourcecenter.org
En Español (608) 237-8913
Toll-free (877) 238-RENT (7368)
Mediation (608) 257-2799
Business Line/TTY (608) 257-0143

Tenant Resource Center Campus Office

Student Activity Center
 ASM Office - Room 4301
 (608) 561-3727
uw@tenantresourcecenter.org

Housing Help Desk

1819 Aberg Ave. Room 2
 Madison, WI 53704
 (Dane County Job Center)
 (608) 242-7406, 10:00 a.m. – 2:00 p.m.

If you need an interpreter, materials in alternate formats, or other accommodations, call our office at (608) 257-0143.

No part of this brochure should be regarded as legal advice or considered a replacement of a landlord's or tenant's responsibility to be familiar with the law. If you need legal assistance, seek the services of a Wisconsin housing attorney.

NOTE: New law 2011 Wis. Act. 108 (also known as SB107) will change some local laws. These laws are indicated by **bold** or ~~strikethrough~~. These laws may or may not affect you depending upon when the law is signed and when the lease went into effect.

Landlord Repair Responsibilities

- **Before** entering into a rental agreement or accepting earnest money, tell the tenant in writing about lack of hot or cold running water, lack of safe electrical system, lack of sewage disposal, heating systems unable to reach 67°F in all living areas in all seasons, and all other likely health or safety hazards. [ATCP 134.04(2)(b), MGO 32.08(2)(a), FO 72-108(2)a.]
- **Before** entering into a rental agreement or accepting earnest money, the landlord must tell the tenant about documented uncorrected building code violations. The landlord must do this by showing the tenant the portions of the building and the notices or orders which have not been fully complied with. [ATCP 134.04(2)(a), MGO 32.08(2)(c), FO 72-108(4)]
- **Before** the rental agreement is signed, put any promises to repair in writing, with specific deadlines for each repair. [ATCP 134.07, MGO 32.09, FO 72-136 & 72-137]
- Keep heating, plumbing, electrical system, and building structure in good condition. [Wis. Stats. 704.07(2)(a), MGO 32.13(2)(a), FO 72-163(a)(1-4)]
- Keep common areas such as hallways, storage areas, laundry rooms, parking lots, and yards clean and in good condition. [Wis. Stats. 704.07(2)(a)1., MGO 32.13(2)(a)1., FO 72-163(1)]
- Maintain all supplied equipment, including all appliances. [Wis. Stats. 704.07(2)(a)2., MGO 32.13(2)(a)2., FO 72-163(a)(2) & (4)]
- Comply with all local housing codes. If the building is occupied by one or more tenants, improper use or damage by one tenant does not relieve the landlord of the duty to maintain the premises for the other tenants in the building. [Wis. Stats. 704.07(2)(a)5.]
- State Law requires the owner or manager of a unit to provide a working smoke detector on each floor including the basement. If a tenant gives written notice to the owner or manager that the smoke detector is not functional, the landlord must take action within five days to make the smoke detector functional. [Wis. Stats. 101.145]. Madison laws have additional requirements that the landlord should know about. [MGO 27.05, MGO 32.06, MGO 34.42]

- Wisconsin law (2007 Wisconsin Act 205 and 2009 Wisconsin Act 158) requires carbon monoxide detectors to be installed and maintained in all new and most existing residential buildings. [MGO 32.06(2)(a)1.j., MGO 32.06(4)]

Tenant Repair Responsibilities

- Perform minor maintenance such as changing light bulbs. [Wis. Stats. 704.07(3)(b), MGO 32.13(3)(b), FO 72-164(b)]
- Keep the apartment in safe, sanitary condition.
- Comply with all local housing codes. [Wis. Stats. 704.07(3)(c), FO 72-164(d)]
- Keep thermostat set at a reasonable temperature to prevent freezing of pipes and other equipment. [FO 72-108(2)b.]
- Repair, or pay the landlord to repair, all damages caused by the tenant or their guests. [Wis. Stats. 704.07(3)(a), MGO 32.13(3)(a), FO 72-164(a)]
- Keep working battery in smoke detectors and give written notice to the landlord if smoke detectors are not working properly. [Wis. Stats. 101.45]

Before You Sign Your Lease

There are several things tenants can do before signing a lease to minimize the chances of future repair problems.

- Call Consumer Protection at (608) 224-4953 or (800) 422-7128 to check if there have been any complaints filed against your prospective landlord.
- Call the local building inspector to check if there are any outstanding building code violations or citations at the property you are considering.
- Inspect the rental unit you are considering, taking notice of repairs and improvements that need to be made.
- Negotiate with your prospective landlord about what repairs or improvements will be made, and write those into the lease.

Moving In

Document all repair problems carefully.

Fill in your check-in form. Tenants have *at least* 7 days from when they move into an apartment to give the completed check-in form to the landlord. Tenants should keep a copy of the completed check-in form for themselves. If you didn't get a check-in form, make your own or get one from the Tenant Resource Center and send a copy to the landlord. Completing the form will document the

state of the rental unit when you moved in, and what damages you should not be charged for.

Request repairs. A check-in form is not a request for repairs; it simply documents the condition of the apartment. If you want the landlord to fix certain problems, follow the suggestions in the next section for getting repairs done.

Getting Repairs Done

- **Make a list.** Before contacting the landlord, make a list of the repair problems that need to be fixed.
- **Call the landlord.** Tell the landlord about the needed repairs and request that they be made within a reasonable time limit. Be sure to contact the landlord as soon as there is a problem, since some repair problems will worsen if they go unaddressed. Keep a log of all calls, including the times and dates of calls, who you talked to, and what you requested.
- **Put it in writing.** If the landlord does not contact you or make repairs within a few days, write a letter or email and include a reasonable deadline for the completion of repairs. Keep a copy for yourself. Landlords often take written correspondence more seriously than phone calls, so be sure to write if your landlord has not responded to previous verbal repair requests. ***For some urgent problems, such as no heat or a broken lock on the main door, you might choose to contact building inspection immediately, and not go through the steps of writing letters if the landlord is not responding to phone calls. If you smell gas, call your utility company immediately!***
- **Follow-up.** If your landlord fails to perform the requested repairs by the deadline, write a second time. This correspondence should note the previous repair request and announce you will take further action (see below) if repairs are not made by a certain date.
- **Call the building inspector.** If the landlord still has not made the necessary repairs, call the Building Inspection Unit. Building Inspection can order the landlord to fix certain problems, such as lack of heat or hot water, pest infestation, missing screens or storm windows, mold, etc. Cosmetic repairs such as faded paint or stained carpeting will usually not be included. The building inspector will order the landlord to make the repairs within a specified amount of time and will return to see that the repairs are complete. Find your local building inspector on the back of this brochure.
- **Apply for rent abatement.** If repairs ordered by the building inspector are not completed, tenants in the Cities of Madison and Fitchburg may be eligible for rent

abatement, or reduced rent. Do not simply withhold rent, or you will risk being evicted. You must first have a building inspector look at your apartment and order repairs. If the landlord fails to complete the ordered repairs by the specified deadline, you may apply for rent abatement. The building inspector should give you information about rent abatement if you are eligible. If you are not sure about your eligibility, call the building inspector (Madison: 266-4551 & Fitchburg: 270-4240) and ask for the rent abatement clerk. [MGO 32.04, FO 72 Article III]

- **Repair and deduct (City of Madison only).** In addition to the Rent Abatement process in the City of Madison, **IF** the landlord fails to complete the repairs ordered by the inspector by the due date, the tenant may choose to make repairs in the order on their own, and deduct the cost of those repairs from the rent. This may be an alternative to rent abatement for some or all of the non-emergency items in a repair order, but may not be duplicated by rent abatement. **BEFORE** beginning any such repairs, the tenant must send a written notice to the landlord and do either of the following:
 - Wait 10 calendar days after mailing the written notice, then begin work for non-emergency items
 - OR:
 - For repairs which were ordered to be completed in less than 10 days, wait 24 hours to begin work.

Please consult the Madison Building Inspector or Tenant Resource Center staff or website for details before proceeding. [MGO 32.17]

- **Withhold rent.** Rent withholding, or temporarily not paying your rent to pressure a landlord into making repairs, **is extremely risky.** When a tenant withholds rent, a landlord may take the tenant to eviction court for nonpayment of rent. If that happens, the tenant must try to prove to the court that withholding was justified. Because tenant-landlord laws do **not** authorize a tenant to do this, it is never certain that the court will decide in the tenant's favor; instead, the tenant may be evicted. After you have exhausted all other possibilities, here are some ways to improve your chances of successfully withholding rent:
 - Request the repairs several times in writing before withholding rent. Give your landlord a reasonable amount of time to make the repairs.
 - Put withheld rent into an escrow account, or savings account. Do not spend it. You might have to prove to a judge that you were withholding rent for the specific purpose of enforcing your rights, and that the money is available if the repairs are completed.