

The landlord needs a court order to remove you from the premises. Your landlord can be prevented from trying to remove you illegally, and can be fined, or even sued. Document what happens and any costs you have related to the illegal eviction. Call the sheriff's office for immediate help, Consumer Protection at (800) 422-7128, Legal Action, or a private attorney. According to Wisconsin consumer protection law, the only legal method to remove a tenant is a judge's order in small claims court (ATCP 134.09).

The landlord must pay a filing fee and file at the county court. You should receive the summons from a sheriff or a civil process server at least 5 days before the **joinder conference** (also known as the "initial hearing" or "return date"). **You must appear in court on that day or you will be evicted.** You do not need to bring witnesses to a joinder conference, but be prepared to discuss your case at this time. The purpose of the conference is to find out if there will be a **settlement** (like a written payment plan or agreement for the tenant to leave on a certain date), or if there will need to be a trial. If a settlement is not reached, either party can request the trial to be on a different date. Many return dates turn immediately from the initial hearing into a trial unless one of the parties asks for the trial to be on a different date.

It is important that if you make a payment agreement that it is a *reasonable* payment schedule. If you make an agreement and do not follow through, you may be evicted without returning to court.

If the case is not settled at the joinder conference it will proceed to **trial**. If you tell the court that you do not want to hold the joinder conference and the trial on the same date, state law requires that the trial be rescheduled to a later date. At trial, you should be prepared to present all evidence and witnesses. Check with your clerk of courts to learn the procedure in your county.

What if I am evicted?

If you go to trial and lose, the judge will issue a written order called a **writ of restitution**. After the landlord gives the sheriff the writ, the sheriff will come within 2 weeks to remove you from the apartment. Usually the sheriff will post a notice before removing you from the premises. Only the sheriff has the authority to post a notice and remove a tenant. (The tenant may contact the sheriff and attempt to arrange a move out date). If the sheriff removes you, your possessions will be moved to storage

and you will have to pay reasonable moving and storage costs to retrieve them (but not back rent). After an eviction, it may be very difficult to rent again. If you are evicted you may wish to contact the Tenant Resource Center, county human services, and First Call For Help at 211 or (608) 246-4357 (in Dane County) for agencies that provide emergency rent, shelter, and other assistance.

After you are evicted, and the landlord has the opportunity to determine how much money you may owe, a **rent and damages hearing** will be held. The tenant should receive a notice of this hearing. At this hearing, a hearing examiner will determine the amount of judgment against you. It is important to attend so that you can provide information that may minimize the amount of the judgment. For example, landlords cannot charge for time spent rerenting or a rerental processing fee. Landlords have an unwaivable duty to **mitigate** or minimize all rerental costs (Wis. Stat. 704.29). For more information contact the Tenant Resource Center. For legal advice, contact a housing attorney.

Important Phone Numbers

First Call for Help (Dane County)	211 or (608) 246-4357
Consumer Protection	(800) 422-7128
Legal Action of Wisconsin	(608) 256-3258
Housing Mediation Service (Dane County only)	(608) 259-2799
Dane County Small Claims Court	(608) 266-4311

For First Call for Help in your county, consult your phone book under "First Call for Help" or "United Way First Call for Help."

For the Small Claims Court in your county, consult your phone book or check on the State Court website at: <http://wicourts.gov/>



Funded in part by the Associated Students of Madison. ASM does not necessarily endorse the beliefs or actions of this organization.



Vocabulary

Cure To remedy or take care of a lease violation.

Joinder conference A pre-trial hearing in an eviction case where the landlord and tenant decide whether they will settle or go to trial. Also known as the "return date" or "initial hearing."

Mitigate The landlord's legal duty to minimize lost rent and other rerental costs after a tenant is evicted, by actively seeking a replacement tenant.

Rent and damages hearing A hearing held after an eviction to determine how much money the evicted tenant owes the landlord for unpaid rent and other losses the landlord suffered.

Retaliation When a landlord takes action against a tenant because the tenant was exercising or trying to exercise his or her rights as a tenant under law.

Serve To formally give a person court papers that inform him or her that he or she is being sued.

Settlement An agreement between parties to end a lawsuit.

Small claims court The court where all eviction cases are filed.

Stipulated dismissal When a stipulation is completed and the defendant follows through on their commitments in the agreement, the case is dismissed.

Stipulation A court-ordered agreement that is agreed to by both parties.

Summons and complaint The formal court papers that order a person to appear in court and inform him or her what the lawsuit is about.

Trial The formal court proceeding in which landlord and tenant present evidence and witnesses to a judge or court commissioner, who then makes a decision about who should win the lawsuit.

Writ of restitution A court order from a judge evicting the tenant and granting possession of the rental property to the landlord.

12/11

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.

Eviction



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 will change some local laws, but none of the information in this brochure was affected.

What is an eviction?

An eviction is a process landlords may begin when they believe a tenant has seriously violated the lease, and they want the tenant to fix the problem or leave the apartment. The process *usually* begins with a notice giving the tenant at least 5 days to remedy a violation. The process *may* eventually end up in **small claims court** with a judge deciding whether the tenant stays (the case is settled by agreement or thrown out) or whether the tenant will be removed from the apartment. **It is important to remember that in Wisconsin a tenant can only be evicted by a judge.**

How does the process begin?

The eviction process begins when the landlord **serves** or gives the tenant a written notice under Wis. Stat. 704.17. A landlord's notice is *not* the same as a **Summons and Complaint** from Small Claims Court.

The landlord should try to give the notice to the tenant or someone in the tenant's family over the age of 14. If the landlord has tried that, he or she may post a copy of the notice in an obvious place on the rented premises *and* mail a copy to the tenant's last known address, or send it by registered mail. However, if the tenant acknowledges that they actually received the notice, it does not matter what method of service the landlord used.

Types of Notices

Note: A notice that your lease will not be renewed or a 28-day notice to end a month-to-month tenancy are “non-renewal notices,” NOT eviction notices.

The notice must be in writing and include the date, the amount of rent due or the lease clause that the tenant has supposedly violated, the type of notice, and the right to cure the problem, if the tenant has one. There are several types of eviction notices:

1) 5-day Pay or Quit Notice is a warning that the tenant is late with rent. The landlord can only give this notice at a point when the rent is late. This notice can be

cured. By law, the landlord has to allow tenants *at least* 5 days (not counting the day it is served, Saturday or Sunday, according to Wis. Stat. 801.15(1)) to pay all overdue rent. Your county, community action agency, or churches might assist. Some tenants mistakenly think they have to leave after receiving this notice! All tenants need to do to avoid a court summons is to pay all that is owed (and avoid being late again). Tenants may want to send a dated letter that explains how much rent is attached. Tenants should keep a copy of the letter and check for documentation that they paid in time.

2) 5-day Notice for Non-Rent Violation is a warning that the tenant caused a disturbance, damaged property, or violated a lease rule. The landlord has to allow tenants *at least* 5 days, and the tenant is only required to promptly take “reasonable steps” to stop the violation, or make a “reasonable offer” to pay the landlord in the case of damages to the unit. Tenants should keep a copy of a letter to the landlord that either denies any violation, or explains that the tenant has taken reasonable steps to **cure**, or remedy, it (like turning down the stereo) within 5 days.

3) 14-day no-right-to-cure notice orders you to move within a period of *at least* 14 days *even* if you fix the problem. The tenant has no right to cure! Landlords can give this notice to week-to-week and month-to-month tenants. Tenants with rental agreements of more than a month can only be given this notice if they *already* received a 5-day for the same violation type (rent or non-rent) within the previous 12 months.

4) 5-day notice with no right to cure is rare. It can be given by the landlord *only* if a law enforcement agency gives the landlord a notice that their property is a “drug nuisance” (drug manufacture, delivery or selling is done by the tenant or done in the tenant's unit). A tenant can challenge this termination (do it in writing to the landlord and keep a copy), and then the landlord must let the tenant stay or schedule a court hearing and prove the “drug nuisance” to a judge.

5) 30-day notice to cure is served only to tenants with a lease for more than a year, giving them at least 30 days to pay late rent or take steps to stop violating lease rules.

Can landlords give either a 5- or 14-day notice?

If the tenant is on a rental agreement for a year or less, the landlord must serve the tenant with a 5-day notice for the first lease violation. If the tenant commits a violation in the same category (rent or other non-rent violations) within 12 months after the 5-day notice was given, the landlord may serve either a 5- or 14-day notice.

If the tenant has a month-to-month rental agreement, the landlord may give a 5- or 14-day notice for the first rent payment violation.

Responding to the notice

Once you receive a 5-, 14-, or 30-day notice, you have three options:

1. You can fix the problem and remain in the apartment.

If you received a 5-day notice and you pay up or take reasonable steps to fix another type of violation within the time limit (the day served, Saturday, and Sunday do not count (Wis. Stat. 801.15(1))), then you have the right to remain in the apartment. The landlord does not have a right to remove you or even go to court or to refuse a rent payment from you. Write a dated letter to the landlord saying the problem is cured and keep a copy. If you received a 14-day notice and fix the problem (remembering to document that you cured with a copied letter) you may still have to negotiate with your landlord. The landlord could refuse your rent and file an eviction summons and complaint to schedule a small claims court hearing. If you reach a settlement, try to get any agreement in writing, signed by all parties, and keep a copy.

2. You can deny any violation and stay.

You might wish to stay if you believe the landlord had no legal reason for giving the notice. Remember, you have a right to a trial and the landlord will need to pay a filing fee, wait for a hearing, and *prove* you violated the lease and that proper notices were given. Sometimes evictions have no grounds. Some evictions are thrown out or tenants win counter-claims because of laws against discrimination and landlord **retaliation** against tenants exercising their legal rights. Judges can

even allow tenants to reduce a percentage of rent to compensate for major health and safety hazards. Contact the Tenant Resource Center for more information or a housing attorney for legal advice.

Note: Even if the court determines that you can stay, once the landlord files a complaint, even if the case is dismissed, the complaint is public record. Future landlords might reject you for the dismissed eviction—so it is better to avoid the filing of a complaint if possible, or be prepared to explain this to prospective landlords.

Warning: The landlord could win the eviction and get a judgment for double the pro-rated rent for each day after the last 5- or 14-day. Double damages are rare, but it happens. Sometimes the safest option is to negotiate with your landlord; **any agreement reached should be in writing with copies for both you and your landlord.** Tenants and landlords in Dane Co. can also use the Housing Mediation Service at (608) 257-2799 to negotiate an agreement.

3. You can move out.

This may be an option if you have a place to go. However, moving out **does not** end your responsibility for the rental agreement. Even if you leave, you will probably still owe the rent, as well as the cost of re-rental ads, until the landlord re-rents or until the lease ends. (The landlord has a duty to make all reasonable efforts to re-rent the unit, according to Wis. Stat. 704.29.) Also, even if you leave, the landlord may still file in court for the money owed, or file in court to evict you, just to make sure you do not move back in. (Avoid this by giving the landlord notice in writing of your move-out date and keep a copy for your records.) The eviction on your court record, the landlord's bad reference, or the eviction on your credit report can make it difficult to find another apartment.

What if I don't move out?

The only way a landlord may remove you is by a court order. Landlords cannot: change your locks, remove your possessions, push you out, turn off your utilities, throw things out in the street, or *do any* self-help eviction. These are illegal evictions and you can sue the landlord for double damages if they take these actions.