

Proof needed for *Dikbut v. Norton* (1970)

- *Dikbut v. Norton* is a court-made law that protects a tenant's right to use a "public policy" like the building code.
- The case can protect tenants asserting or attempting to use a public policy (unlike the statute) and can protect tenants not covered by the Consumer Protection (ATCP) code.
- The case requires a strong level of proof; the assertion, use, or attempted use of public policy must be the only reason for the landlord's eviction or harassment.

Proof needed for *Madison General Ordinance 32.12(4) and 32.15*

- City of Madison residents have the same protections as in the Consumer Protection code, but the burden of proof is put on the landlord.
- City police can issue fines from \$60 to \$600.
- If the matter goes to court, the tenants can cite MGO 32.15, which requires the court to "presume" the landlord is retaliating if the landlord's act occurred within six months after the tenant made a complaint to city authorities.

How can I respond to landlord retaliation?

Tenants who believe they are being retaliated against should do the following:

- 1. Document what is going on.** Tenants should write a letter to the landlord that documents that the act is retaliatory and they know it. For example, "As you know, I asked you last week to stop entering without proper notice. Today you have given me a nonrenewal notice. You should be aware that your nonrenewal is invalid and illegal under statute 704.45 and ATCP 134.09(5). I intend to renew and expect you to rescind this notice and remove it from my file. I know my rights to file a complaint or sue for double damages."
- 2. Contact an agency.** If the landlord does not quickly rescind the act in writing, send a copy of

your letter to Consumer Protection or call them toll-free at (800) 422-7128. Tenants in cities like Madison should also forward their complaint to the building inspector, police department, and City Attorney. Agencies may warn the landlord to stop their threats or harassment, or even prosecute if the landlord has violated regulations before.

3. Gather evidence. If the act(s) occurred after you called the inspector, police or other agency, make sure you get a copy of their report for your records. If the landlord sues to evict you, you can bring the report, letters from the landlord, your letter, any other evidence or witnesses, and copies of the laws and ask that the eviction be dismissed.

4. Bring it to a judge. If the landlord's retaliation has cost you, you can sue for any related damages. Violations of Consumer Protection laws require a mandatory double of related damages plus court costs and attorney fees. If the landlord is threatening an eviction suit, the tenant can write back explaining they know they cannot be evicted in retaliation for exercising their rights, and bring a copy of the letter and other evidence for the judge to see at the eviction trial. Attorneys are not required in small claims court or eviction cases, but tenants may want to contact a qualified Wisconsin housing attorney.



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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.

Landlord Retaliation



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.

Have you experienced retaliation for exercising your tenant rights?

The law protects tenants from landlords who would retaliate against tenants for trying to exercise their rights. The legislature, courts, and the Department of Agriculture, Trade and Consumer Protection have all created protections recognizing that tenant rights are meaningless if tenants will not use them for fear of landlord retaliation. If you believe your landlord has illegally retaliated against you, ask yourself the following three questions:

1. Can you show that you asserted, exercised or attempted to exercise a tenant right?

The first indication that an action may be illegal retaliation is that it follows a tenant exercising a legal right relating to residential tenancies. Tenants do not need to have finished exercising the right, they could just have asserted the right or attempted to use it. Tenant rights include:

- Demanding required or promised repairs
- Calling the building inspector
- Demanding the landlord only enter for purposes allowed by landlord regulations
- Refusing landlord entry without proper notice
- Filing a complaint with Consumer Protection or the Tenant Resource Center or filing a suit against the management
- Having a guest under the tenant's right to "exclusive possession of the premises" since the lease does not forbid guests
- Refusing to allow the landlord to change substantial rules in the middle of the lease
- Demanding an end to discrimination (for example

a Black tenant demanding an air conditioner since one was provided to all White tenants but none to Black tenants)

- Demanding the landlord protect the tenant's right to peaceful enjoyment by warning or evicting a noisy neighbor
- Asserting or attempting to exercise any tenant right from a lease, statute, ordinance, administrative code or court decision

Even if the landlord and tenant both know that the tenant asserted a right, the problem may be documenting it. When tenants have a concern—about repairs, for example—they should never express it only verbally. Tenants should follow up in writing and keep a copy of the letter. Also, if tenants file a complaint with a building inspector, Consumer Protection or another agency, they should get a copy of the report for their records as soon as possible.

2. Did your landlord perform a retaliatory action?

Prohibited retaliatory acts under Wisconsin Statute 704.45

- Increasing the rent
- Decreasing the services available to the tenant
- Filing an eviction action in court
- Refusing to renew the lease
- Threatening to do any of the above

Prohibited retaliatory acts under the Wisconsin Administrative Code ATCP 134.09(5) and Madison General Ordinance 32.12(4) and 32.15

- Terminating a tenancy
- Giving notice preventing the automatic renewal of a lease
- Constructively evict a tenant by reducing heat, water or electricity.

An additional retaliatory act prohibited in the City of Madison only is reporting the tenant to law enforce-

ment authorities as having unlawfully entered or immigrated into the United States regardless of the validity of such a report (MGO 32.12(4)) in order to retaliate against the tenant for having exercised his or her rights as a tenant.

3. Did the landlord do this because you asserted, exercised, or attempted to exercise a tenant right?

Each regulation has a different level of proof required for the act to be considered illegal:

Proof needed for Wisconsin Statute 704.45

- The tenant must only show that most of the evidence indicates the landlord would not have done the action "but for" the tenant's exercise of a tenant right.
- While the landlord could have other legitimate reasons for doing the eviction or act, the retaliation is still illegal if the landlord would not have retaliated except that the tenant exercised his or her rights.
- Wis. Stat. 704.45 provides absolutely no protection against eviction if tenants are behind in their rent (except if the rent not paid is due to a retaliatory rent increase).
- Wis. Stat. 704.45 provides absolutely no protection for tenants making complaints about defects in the premises they caused themselves through negligence or improper use.

Proof needed for Wisconsin Administrative Code ATCP 134.09(5)

- Tenants can enforce this code by filing a complaint with Consumer Protection.
- The code also protects tenants who "asserted, or attempted to assert any right," whereas the statute seems only to protect tenants who actually exercise a right.
- If tenants sue in Small Claims Court for violation of these codes, they must receive double any related financial loss (Wis. Stat. 100.20(5)).