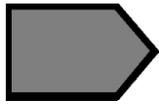




TENANT RESOURCE CENTER



Wisconsin Law Changes - 12/21/11 2011 Wis. Act 108 (SB107)



2011 Wisconsin Act 108 pre-empts local governments from passing laws that do any of the following:

1. Prohibits landlords from, or places limitations on landlords using, attempting to use or obtain, any of the following information:
 - a. Monthly household income. [Wis. Stat. 66.0104\(2\)\(a\)1.a.](#)
 - b. Occupation. [Wis. Stat. 66.0104\(2\)\(a\)1.b.](#)
 - c. Rental history. [Wis. Stat. 66.0104\(2\)\(a\)1.c.](#)
 - d. Credit information. [Wis. Stat. 66.0104\(2\)\(a\)1.d.](#)
 - e. Court records (including arrest and conviction records) [Wis. Stat. 66.0104\(2\)\(a\)1.e.](#)
 - f. Social security numbers. [Wis. Stat. 66.0104\(2\)\(a\)1.f.](#)
2. Limits how far back in time a landlord can check a potential tenant's credit, conviction record, or housing background. [Wis. Stat. 66.0104\(2\)\(a\)2.](#)
3. Prohibits a landlord from entering into a rental agreement while another tenant has a lease on the property. [Wis. Stat. 66.0104\(2\)\(a\)3.](#)
4. Prohibits a landlord from showing a property to a potential tenant during the tenancy of another tenant. [Wis. Stat. 66.0104\(2\)\(a\)4.](#)
5. Places additional requirements beyond [ATCP 134](#) on a landlord regarding earnest money, security deposits, or pre- or post-tenancy inspections. [Wis. Stat. 66.0104\(2\)\(a\)4.](#)

The State Law impacts Madison (**MAD**), Fitchburg (**FB**) and Dane County (**DANE**) in the following ways:

In Madison (**MAD**) and all of Dane County (**DANE**):

1. Landlords are no longer prevented from denying housing based on arrest or conviction record, even if the conviction or arrest has nothing to do with housing. Landlords can check a prospective tenant's history ten, fifteen, twenty or more years ago. If landlords check one person's conviction records, they should still check all prospective tenant's conviction records to prevent being accused of discrimination based on other protected classes (primarily race) [DCO 31.11\(1\)\(e\)](#), [former MGO 39.03\(4\)\(d\)](#), [Wis. Stat. 66.0104\(2\)\(a\)1.e.](#)
NOTE: As of April 2016, HUD has new guidance for landlords who that they should not be doing blank arrest and conviction records checks on all tenants. See http://www.tenantresourcecenter.org/for_landlords_criminal_history for more information.
2. Landlords can reject an application if a tenant refuses to provide a social security number. Citizenship status (**MAD** only) and race and ethnicity (**MAD** and **DANE**) are still protected classes. [DCO 31.15](#), [MGO 32.12\(7\)\(b\)](#), [former MGO 39.03\(4\)\(d\)](#), [Wis. Stat. 66.0104\(2\)\(a\)1.f.](#)

NOTE: None of these laws pre-empt the local Section 8 ordinances. Landlords in Dane County and Madison cannot deny a tenant just because the tenant has a Section 8 voucher.

In Madison (**MAD**) and Fitchburg (**FB**):

3. Landlords are no longer limited to collecting security deposits equal to one month's rent. The security deposit can be any amount the landlord requests. [MGO 32.07\(2\)\(b\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
4. Unless it is written into the lease, landlords no longer need to provide interest on security deposits after 12/21/11. [MGO 32.07\(3\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
5. Landlords do not need to use check-out forms. [MGO 32.07\(5\)\(a\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)

6. Landlords are no longer required to provide receipts with the itemized security deposit withholding list. [MGO 32.07\(7\)\(b\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
NOTE: If a security deposit case goes to court, judges still want to see evidence of damage at the time of check-out, and an itemized list of actual costs. This is true even though a landlord doesn't need to do it by law. Tenants can and should gather their own documentation to prove their case (pictures, witnesses, etc.) at check-out.
7. Security deposits can now be increased during a tenancy (if a tenant agrees) or at renewal. [MGO 32.07\(2\)\(b\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
8. Landlords are no longer prohibited from holding a security deposit from two different tenants (sublessee and sublessor). Landlords still must return security deposits as required by [Wis. Stat. 704.29](#), [MGO 32.07\(2\)\(d\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
9. Landlords cannot be sued for three times the amount of the wrongfully withheld security deposit. Tenants can only sue for double. [MGO 32.07\(10\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
10. Landlords can show an apartment with only a 12 hour notice. A 24 hour notice is still required to enter to make repairs or inspect. (Changed again with [2013 Wis. Act 76.](#)) [MGO 32.05\(1\)\(e\)](#), [Wis. Stat. 66.0104\(2\)\(a\)4.](#)

In Madison (MAD) only:

11. Landlords are no longer prevented from using blanket minimum income standards that do not take into account past history of ability to pay rent. [MGO 32.12\(7\)](#), [Wis. Stat. 66.0104\(2\)\(a\)1.a.](#)
12. Landlords no longer need to take photos of damage to items which they deduct from a security deposit. [MGO 32.07\(7\)\(a\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
13. Landlords can show the apartment for the next year the day after the tenant starts renting. [MGO 32.12\(8\)](#) & [\(9\)](#), [Wis. Stat. 66.0104\(2\)\(a\)4.](#)
14. Landlords can collect credit check fees which were previously prohibited in the City of Madison. [MGO 32.02\(2\)\(\(c\)](#) & [32.10\(3\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)
15. Landlords are no longer limited to 3 days and 3 hours per day when giving notice to enter an apartment. [MGO 32.05\(1\)\(e\)](#), [Wis. Stat. 66.0104\(2\)\(a\)4.](#)
16. Landlords are no longer required to give tenants an itemized list of earnest money deductions if requested. [MGO 32.10\(3\)\(b\)](#), [Wis. Stat. 66.0104\(2\)\(b\)](#)

Many laws remain in Dane County, Madison and Fitchburg ordinances. Looking at the city and county ordinances may be very confusing because most of the pre-empted laws are still on the books and local officials have been unwilling to remove pre-empted provisions. **Only the Madison Equal Opportunities Ordinance has been updated.** The City of Madison has specifically refused to remove some of its laws (required disclosures about smoke detectors under [2013 Wis. Act 76](#) in particular, by a unanimous vote) and indicated they may prosecute landlords and fight any legal challenges to local control. The City of Madison is also pursuing a charter ordinance to override the statewide pre-emption.

Complicated changes. How these law changes affect your specific situation will depend on many factors, including what the lease says (or does not say), where the tenant lives, and details of the dispute. Some of the laws that were pre-empted are essentially still in effect either because the courts expect certain practices, or because other laws with the same or similar protections are still in effect. Landlords should be careful when considering their practices. This act may make additional minor changes which are not listed in this summary. Please contact Tenant Resource Center with specific questions.

www.tenantresourcecenter.org

1202 Williamson Street, Suite 102, Madison, WI 53703 | Monday-Friday, 9 AM-6 PM | Walk in, no appointment necessary

Campus: 333 East Campus Mall, Student Activity Center, Room 3156. See website for current hours.

Housing Counseling Dane County: 608-257-0006 | Outside Dane County: 877-238-RENT (7368)

Español: 608-257-0006 x1 | Hmong: 608-257-0006 x2 | Campus: 608-216-2321

Administrative: 608-257-0006 x0 | Fax: 608-229-1317

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