

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** or initial hearing. **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. 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 small claims clerk 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 10 days to remove you from the apartment. Usually the sheriff will post a 24-hour notice before removing you from the premises. Only the sheriff has the authority to post a 24-hour 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 re-renting or a rental processing fee. Landlords have an unwaivable duty to **mitigate** or minimize all rental 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 (608) 259-2799
(Dane County only)

Dane County Small Claims Court (608) 266-4311

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

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

Vocabulary

small claims court the court where all eviction cases are filed

serve to formally give a person court papers that inform him or her that he or she is being sued

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

cure to remedy or take care of a lease violation

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

joinder conference a pre-trial hearing in an eviction case where landlord and tenant decide whether they will settle or go to trial

settlement an agreement between parties to end a lawsuit

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

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

mitigate the landlord’s legal duty to minimize lost rent and other rental costs after a tenant is evicted, by actively seeking a replacement tenant

Eviction



Tenant Resource Center

1202 Williamson St., Suite A
Madison, WI 53703
9:00 a.m.–6:00 p.m., Monday–Friday
Rental Rights (608) 257-0006
Toll-free outside Dane County
(877) 238-RENT (7368)
Office/TTY (608) 257-0143
Mediation (608) 257-2799
asktrc@tenantresourcecenter.org
www.tenantresourcecenter.org

Housing Help Desk

1819 Aberg Ave. Room 2
(Dane County Job Center)
(608) 242-7406, 8:00 a.m.–4:30 p.m.

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

Si Ud. necesita servicios en español, llame al (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.

11/05

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.

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 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 rent due or lease clause the tenant has supposedly violated, or the rent owed, the type of notice, and the right to cure the problem, if the tenant has one. There are several types of termination 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) A 5-day notice with-no-right-to-cure is rare. It can be given by the landlord *only* if the police give the landlord a notice that their property is a “drug nuisance” (drug making 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) 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. Judges can allow tenants to reduce a percentage of rent to compensate for major health and safety hazards. Some evictions are thrown out or tenants win counter-claims because of laws against discrimination and landlord **retaliation** against tenants exercising their legal rights. Contact the Tenant Resource Center for more information or a housing attorney for legal advice.

However, if you stay and the landlord files a summons, even if the case is dismissed, the summons is public

record. Future landlords might turn you down even for the dismissed eviction—so it is better to avoid the summons if possible.

Also, 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. This situation is rare, but it happens. If possible, 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 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 rerental ads, until the landlord rerents or until the lease ends. (The landlord has a duty to make all reasonable efforts to rent the unit, according to Wis. Stat. 704.29.) Also, even if you leave, the landlord may still 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 copies for your records.) This court record or the landlord’s bad reference or 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 *any* self-help eviction.

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, 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).