Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

CHAPTER 704

LANDLORD AND TENANT

704.01 Definitions.
704.02 Severability of rental agreement provisions.
704.03 Requirement of writing for rental agreements and termination.
704.05 Rights and duties of landlord and tenant in absence of written agreement to contrary.
704.06 Water heater thermostat settings.
704.07 Repairs; untenantability.
704.08 Information check−in sheet.
704.09 Transferability; effect of assignment or transfer; remedies.
704.11 Lien of landlord.
704.13 Acts of tenant not to affect rights of landlord.
704.15 Requirement that landlord notify tenant of automatic renewal clause.
704.16 Termination of tenancy for imminent threat of serious physical harm; changing locks.
704.165 Termination of tenancy at death of tenant.
704.17 Notice terminating tenancies for failure to pay rent or other breach by tenant.
704.19 Notice necessary to terminate periodic tenancies and tenancies at will.
704.21 Manner of giving notice.
704.22 Service of process in residential tenancy on nonresident party.
704.23 Removal of tenant on termination of tenancy.
704.25 Effect of holding over after expiration of lease; removal of tenant.
704.27 Damages for failure of tenant to vacate at end of lease or after notice.
704.28 Withholding from and return of security deposits.
704.29 Recovery of rent and damages by landlord; mitigation.
704.31 Remedy on default in long terms; improvements.
704.40 Remedies available when tenancy dependent upon life of another terminates.
704.44 Residential rental agreement that contains certain provisions is void.
704.45 Retaliatory conduct in residential tenancies prohibited.
704.50 Disclosure duty; immunity for providing notice about the sex offender registry.
704.90 Self−service storage facilities.
704.95 Practices regulated by the department of agriculture, trade and consumer protection.

Cross−reference: See also ch. ATCP 134, Wis. adm. code.

704.01 Definitions. In this chapter, unless the context indicates otherwise:

(1) "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the commencement and expiration can be ascertained by reference to some event, such as completion of a building. A lease is included within this chapter even though it may also be treated as a conveyance under ch. 706. An agreement for transfer of possession of only personal property is not a lease.

(2) "Periodic tenant" means a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day−to−day, week−to−week, month−to−month, year−to−year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent−paying dates normally evidencing that intent.

(3) "Premises" mean the property covered by the lease, including not only the realty and fixtures, but also any personal property furnished with the realty.

(3m) "Rental agreement" means an oral or written agreement between a landlord and tenant, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent. "Rental agreement" includes a lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the future.

(4) "Tenancy" includes a tenancy under a lease, a periodic tenancy or a tenancy at will.

(5) "Tenant at will" means any tenant holding with the permission of the tenant's landlord without a valid lease and under circumstances not involving periodic payment of rent; but a person holding possession of real property under a contract of purchase or an employment contract is not a tenant under this chapter.

History: 1983 a. 189; 1993 a. 486; 2007 a. 184.

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

704.02 Severability of rental agreement provisions. The provisions of a rental agreement are severable. If any provision of a rental agreement is rendered void or unenforceable by reason of any statute, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid provision.

History: 2011 a. 143.

704.03 Requirement of writing for rental agreements and termination. (1) ORIGINAL AGREEMENT. Notwithstanding s. 704.02, a lease for more than a year, or a contract to make such a lease, is not enforceable unless it meets the requirements of s. 706.02 and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease, and a reasonably definite description of the premises, or unless a writing, including by means of electronic mail or facsimile transmission, signed by the landlord and the tenant sets forth the amount of rent or other consideration, the duration of the lease, and a reasonably definite description of the premises and the commencement date is established by entry of the tenant into possession under the writing. Sections 704.05 and 704.07 govern as to matters within the scope of such sections and not provided for in such written lease or contract.

(2) ENTRY UNDER UNENFORCEABLE LEASE. If a tenant enters into possession under a lease for more than one year which does not meet the requirements of sub. (1), and the tenant pays rent on a periodic basis, the tenant becomes a periodic tenant. If the premises in such case are used for residential purposes and the rent is payable monthly, the tenant becomes a month−to−month tenant; but if the use is agricultural or nonresidential, the tenant becomes a year−to−year tenant without regard to the rent−payment periods. Except for duration of the tenancy and matters within the scope of ss. 704.05 and 704.07, the tenancy is governed by the terms and conditions agreed upon. Notice as provided in s. 704.19 is necessary to terminate such a periodic tenancy.

(3) ASSIGNMENT. An assignment by the tenant of a leasehold interest which has an unexpired period of more than one year is not enforceable against the assignor unless the assignment is in writing reasonably identifying the lease and signed by the assignor; and any agreement to assume the obligations of the original lease which has an unexpired period of more than one year is not enforceable unless in writing signed by the assignee.

(4) TERMINATION OF WRITTEN LEASE PRIOR TO NORMAL EXPIRATION DATE. An agreement to terminate a tenancy more than one year prior to the expiration date specified in a valid written lease is not enforceable unless it is in writing signed by both parties. Any other agreement between the landlord and tenant to terminate a lease prior to its normal expiration date, or to terminate a periodic tenancy or tenancy at will without the statutory notice

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

required by s. 704.19 may be either oral or written. Nothing herein prevents surrender by operation of law.

(5) PROOF. In any case where a lease or agreement is not in writing signed by both parties but is enforceable under this section, the lease or agreement must be proved by clear and convincing evidence.

History: 1993 a. 486; 2011 a. 143.

If there is no written lease, section 704.07 applies to the obligation to make repairs. For there to be a remedy for a breach of a duty to repair other than that provided in s. 704.07, the obligation must be in a written lease signed by both parties. Halverson v. River Falls Youth Hockey Association, 226 Wis. 2d 105, 593 N.W.2d 895 (Ct. App. 1999), 98−2445.

704.05 Rights and duties of landlord and tenant in absence of written agreement to contrary. (1) WHEN SECTION APPLICABLE. So far as applicable, this section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision in writing signed by both the landlord and the tenant. Except as otherwise provided in this section, this section applies to any tenancy.

(2) POSSESSION OF TENANT AND ACCESS BY LANDLORD. Until the expiration date specified in the lease, or the termination of a periodic tenancy or tenancy at will, and so long as the tenant is not in default, the tenant has the right to exclusive possession of the premises, except as hereafter provided. The landlord may upon advance notice and at reasonable times inspect the premises, make repairs and show the premises to prospective tenants or purchasers; and if the tenant is absent from the premises and the landlord reasonably believes that entry is necessary to preserve or protect the premises, the landlord may enter without notice and with such force as appears necessary.

(3) USE OF PREMISES, ADDITIONS OR ALTERATIONS BY TENANT. The tenant can make no physical changes in the nature of the premises, including decorating, removing, altering or adding to the structures thereon, without prior consent of the landlord. The tenant cannot use the premises for any unlawful purpose nor in such manner as to interfere unreasonably with use by another occupant of the same building or group of buildings.

(4) TENANT'S FIXTURES. At the termination of the tenancy, the tenant may remove any fixtures installed by the tenant if the tenant either restores the premises to their condition prior to the installation or pays to the landlord the cost of such restoration. Where such fixtures were installed to replace similar fixtures which were part of the premises at the time of the commencement of the tenancy, and the original fixtures cannot be restored the tenant may remove fixtures installed by the tenant only if the tenant replaces them with fixtures at least comparable in condition and value to the original fixtures. The tenant's right to remove fixtures is not lost by an extension or renewal of a lease without reservation of such right to remove. This subsection applies to any fixtures added by the tenant for convenience as well as those added for purposes of trade, agriculture or business; but this subsection does not govern the rights of parties other than the landlord and tenant.

(5) DISPOSITION OF PERSONALTY LEFT BY TENANT. (a) *At the landlord's discretion.* 1. If a tenant removes from the premises and leaves personal property, the landlord may presume, in the absence of a written agreement between the landlord and the tenant to the contrary, that the tenant has abandoned the personal property and may, subject to par. (am), dispose of the abandoned personal property in any manner that the landlord, in its sole discretion, determines is appropriate.

2. If the landlord disposes of the property by private or public sale, the landlord may send the proceeds of the sale minus any costs of sale and any storage charges if the landlord has first stored the personalty to the department of administration for deposit in the appropriation under s. 20.505 (7) (h).

(am) *Exception for medical items.* If the personal property that the tenant leaves behind is prescription medication or prescription medical equipment, the landlord shall hold the property for 7 days from the date on which the landlord discovers the property. After that time, the landlord may dispose of the property in the manner that the landlord determines is appropriate, but shall promptly return the property to the tenant if the landlord receives a request for its return before the landlord disposes of it.

(b) *Notice required if property is a manufactured or mobile home or a vehicle.* 1. In this paragraph:

a. "Manufactured home" has the meaning given in s. 101.91 (2).

b. "Mobile home" has the meaning given in s. 101.91 (10), but does not include a recreational vehicle, as defined in s. 340.01 (48r).

c. "Titled vehicle" means a vehicle, as defined in s. 340.01 (74), for which a certificate of title has been issued by any agency of this state or another state.

2. If the abandoned personal property is a manufactured home, mobile home, or titled vehicle, before disposing of the abandoned property the landlord shall give notice of the landlord's intent to dispose of the property by sale or other appropriate means to all of the following:

a. The tenant, personally or by regular or certified mail addressed to the tenant's last−known address.

b. Any secured party of which the landlord has actual notice, personally or by regular or certified mail addressed to the secured party's last−known address.

(bf) *Notice that landlord will not store property.* If the landlord does not intend to store personal property left behind by a tenant, except as provided in par. (am), the landlord shall provide written notice to a tenant when the tenant enters into, and when the tenant renews, a rental agreement that the landlord will not store any items of personal property that the tenant leaves behind when the tenant removes from the premises, except as provided in par. (am). Notwithstanding pars. (a), (am), and (b), if the landlord does not provide to a tenant the notice required under this paragraph, the landlord shall comply with s. 704.05, 2009 stats., with respect to any personal property left behind by the tenant when the tenant removes from the premises.

(c) *Rights of 3rd persons.* The landlord's power to dispose as provided by this subsection applies to any property left on the premises by the tenant, whether owned by the tenant or by others. The power to dispose under this subsection applies notwithstanding any rights of others existing under any claim of ownership or security interest, but is subject to s. 321.62. The tenant or any secured party has the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of any expenses that the landlord has incurred with respect to the disposition of the property.

(cm) *Inapplicability to self−storage facilities.* This subsection does not apply to a lessee of a self−storage unit or space within a self−storage facility under s. 704.90.

History: 1993 a. 374, 486; 2001 a. 16; 2003 a. 33; 2005 a. 253; 2011 a. 32, 143.

Any act of the landlord that so interferes with the tenant's enjoyment or possession of the premises as to render them unfit for occupancy for the purposes for which they were leased is an eviction releasing the tenant from the obligation to pay rent. First Wisconsin Trust Co. v. L. Wiemann Co. 93 Wis. 2d 258, 286 N.W.2d 360 (1980).

An allegation in a lessee's complaint that the premises were undamaged did not relieve the lessor of the burden to prove damages. Rivera v. Eisenberg, 95 Wis. 2d 384, 290 N.W.2d 539 (Ct. App. 1980).

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

704.06 Water heater thermostat settings. A landlord of premises which are subject to a residential tenancy and served by a water heater serving only that premises shall set the thermostat of that water heater at no higher than 125 degrees Fahrenheit before any new tenant occupies that premises or at the minimum setting of that water heater if the minimum setting is higher than 125 degrees Fahrenheit.

History: 1987 a. 102.

704.07 Repairs; untenantability. (1) APPLICATION OF SECTION. This section applies to any nonresidential tenancy if there is no contrary provision in writing signed by both parties and to all residential tenancies. An agreement to waive the requirements

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

of this section in a residential tenancy, including an agreement in a rental agreement, is void. Nothing in this section is intended to affect rights and duties arising under other provisions of the statutes.

(2) DUTY OF LANDLORD. (a) Except for repairs made necessary by the negligence of, or improper use of the premises by, the tenant, the landlord has a duty to do all of the following:

1. Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

2. Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

3. Make all necessary structural repairs.

4. Except for residential premises subject to a local housing code, and except as provided in sub. (3) (b), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

5. For a residential tenancy, comply with any local housing code applicable to the premises.

(b) If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from the landlord's duty as to the other tenants to make repairs as provided in par. (a).

(bm) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any building code or housing code violation to which all of the following apply:

1. The landlord has actual knowledge of the violation.

2. The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises.

3. The violation presents a significant threat to the prospective tenant's health or safety.

4. The violation has not been corrected.

(c) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either sub. (3) or (4) governs.

(3) DUTY OF TENANT. (a) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.

(b) Except for residential premises subject to a local housing code, the tenant is also under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent.

(c) A tenant in a residential tenancy shall comply with a local housing code applicable to the premises.

(4) UNTENANTABILITY. If the premises become untenantable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of sub. (2) materially affecting the health or safety of the tenant, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard or the substantial violation of sub. (2) materially affecting the health or safety of the tenant; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant. If the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. This section does not authorize rent to be withheld in full, if the tenant remains in possession. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenantable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenantable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

History: 1981 c. 286; 1993 a. 213, 486, 491; 2001 a. 103; 2011 a. 143.

The remedy provided to the lessor by sub. (3) does not exclude diminution of market value as an alternative method of computing damages, and although the former is to be preferred where the property is easily repairable and the latter where the injury does not destroy the property, evidence of each method may be introduced by either party with the lesser amount awardable as the proper measure of damages. Laska v. Steinpreis, 69 Wis. 2d 307, 231 N.W.2d 196 (1975).

A landlord must exercise ordinary care toward tenants and others on leased premises with permission. Pagelsdorf v. Safeco Insurance Co. of America, 91 Wis. 2d 734, 284 N.W.2d 55 (1979).

Sub. (3) (a) requires a tenant to pay for damage that the tenant negligently causes to a landlord's property regardless of whether the landlord or landlord's insurer initially pays for the damage. Bennett v. West Bend Mutual Insurance Co. 200 Wis. 2d 313, 546 N.W.2d 204 (Ct. App. 1996), 95−2673.

If there is no written lease, section 704.07 applies to the obligation to make repairs. For there to be a remedy for a breach of a duty to repair other than that provided in s. 704.07, the obligation must be in a written lease signed by both parties. Halverson v. River Falls Youth Hockey Association, 226 Wis. 2d 105, 593 N.W.2d 895 (Ct. App. 1999), 98−2445.

Sub. (2) does not authorize an independent cause of action for defective conditions that do not rise to the level of a health or safety hazard, but are nonetheless the result of the failure of a landlord to maintain equipment in a reasonable state of repair. Sub. (4) is the exclusive remedy for violations of sub. (2). Zehner v. Village of Marshall, 2006 WI App 6, 288 Wis. 2d 660, 709 N.W.2d 64, 04−2789.

Sub. (2) (a) 3. does not require the landlord to make all structural repairs, only all necessary structural repairs, and implies that the landlord will have some notice of the defect, latent or obvious, so that he or she can evaluate whether a repair is, in fact, a necessary repair. Raymaker v. American Family Mutual Insurance Co. 2006 WI App 117, 293 Wis. 2d 392, 718 N.W.2d 154, 05−1557.

Nothing in the history of the section suggests any intent by the legislature to impose negligence per se for a violation of this section. Rather, the legislature intended only to alter the common law rule to make the landlord and tenant more evenly share the duties of repair. Sub. (4) provides the tenant with the remedy of rent abatement if the landlord fails to fulfill his or her repair duties and to the extent the tenant is deprived of use of the premises, but this section does not provide a private cause of action. Raymaker v. American Family Mutual Insurance Co. 2006 WI App 117, 293 Wis. 2d 392, 718 N.W.2d 154, 05−1557.

An appliance that cannot be used as intended without creating a risk of fire or electrocution is not in reasonable working condition and constitutes a substantial violation materially affecting the health or safety of the tenant under sub. (4), entitling the tenant to rent abatement. Boelter v. Tschantz, 2010 WI App 18, 323 Wis. 2d 208, 779 N.W.2d 467, 09−1011.

Landlord and tenant law — the implied warranty of habitability in residential leases. 58 MLR 191.

Landlord no longer immune from tort liability for failure to exercise reasonable care in maintaining premises. 64 MLR 563 (1981).

704.08 Information check−in sheet. A landlord shall provide to a new residential tenant when the tenant commences his or her occupancy of the premises a standardized information check−in sheet that contains an itemized description of the condition of the premises at the time of check−in. The tenant shall be given 7 days from the date the tenant commences his or her occupancy to complete the check−in sheet and return it to the landlord. The landlord is not required to provide the information check−in sheet to a tenant upon renewal of a rental agreement. This section does not apply to the rental of a plot of ground on which a manufactured home, as defined in s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05 (5) (b) 1. b., may be located.

History: 2011 a. 143.

704.09 Transferability; effect of assignment or transfer; remedies. (1) TRANSFERABILITY OF INTEREST OF TENANT OR LANDLORD. A tenant under a tenancy at will or any periodic tenancy less than year−to−year may not assign or sublease except with the agreement or consent of the landlord. The interest of any other tenant or the interest of any landlord may be transferred except as the lease expressly restricts power to transfer. A lease restriction on transfer is construed to apply only to voluntary transfer unless there is an express restriction on transfer by operation of law.

(2) EFFECT OF TRANSFER ON LIABILITY OF TRANSFEROR. In the absence of an express release or a contrary provision in the lease, transfer or consent to transfer does not relieve the transferring

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

party of any contractual obligations under the lease, except in the special situation governed by s. 704.25 (5).

(3) COVENANTS WHICH APPLY TO TRANSFEREE. All covenants and provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease. However, a successor in interest is liable in damages, or entitled to recover damages, only for a breach which occurs during the period when the successor holds his or her interest, unless the successor has by contract assumed greater liability; a personal representative may also recover damages for a breach for which the personal representative's decedent could have recovered.

(4) SAME PROCEDURAL REMEDIES. The remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.

(5) CONSENT AS AFFECTING SUBSEQUENT TRANSFERS. If a lease restricts transfer, consent to a transfer or waiver of a breach of the restriction is not a consent or waiver as to any subsequent transfers.

History: 1971 c. 211 s. 126; 1993 a. 486.

704.11 Lien of landlord. Except as provided in ss. 704.90 and 779.43 or by express agreement of the parties, the landlord has no right to a lien on the property of the tenant; the common−law right of a landlord to distrain for rent is abolished.

History: 1979 c. 32 s. 92 (9); 1987 a. 23 s. 2; 2011 a. 143.

704.13 Acts of tenant not to affect rights of landlord. No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord or the latter's successors in interest can prejudice the right of the original landlord or the original landlord's successors to possession of the premises.

History: 1993 a. 486.

704.15 Requirement that landlord notify tenant of automatic renewal clause. A provision in a lease of residential property that the lease shall be automatically renewed or extended for a specified period unless the tenant or either party gives notice to the contrary prior to the end of the lease is not enforceable against the tenant unless the lessor, at least 15 days but not more than 30 days prior to the time specified for the giving of such notice to the lessor, gives to the tenant written notice in the same manner as specified in s. 704.21 calling the attention of the tenant to the existence of the provision in the lease for automatic renewal or extension.

History: 1993 a. 486.

704.16 Termination of tenancy for imminent threat of serious physical harm; changing locks. (1) TERMINATING TENANCY BY TENANT. A residential tenant may terminate his or her tenancy and remove from the premises if both of the following apply:

(a) The tenant or a child of the tenant faces an imminent threat of serious physical harm from another person if the tenant remains on the premises.

(b) The tenant provides the landlord with notice in the manner provided under s. 704.21 and with a certified copy of any of the following:

1. An injunction order under s. 813.12 (4) protecting the tenant from the person.

2. An injunction order under s. 813.122 protecting a child of the tenant from the person.

3. An injunction order under s. 813.125 (4) protecting the tenant or a child of the tenant from the person, based on the person's engaging in an act that would constitute sexual assault under s. 940.225, 948.02, or 948.025, or stalking under s. 940.32, or attempting or threatening to do the same.

4. A condition of release under ch. 969 ordering the person not to contact the tenant.

5. A criminal complaint alleging that the person sexually assaulted the tenant or a child of the tenant under s. 940.225, 948.02, or 948.025.

6. A criminal complaint alleging that the person stalked the tenant or a child of the tenant under s. 940.32.

7. A criminal complaint that was filed against the person as a result of the person being arrested for committing a domestic abuse offense against the tenant under s. 968.075.

(2) NOT LIABLE FOR RENT. If a residential tenant removes from the premises because of a threat of serious physical harm to the tenant or to a child of the tenant from another person and provides the landlord with a certified copy specified under sub. (1) and with notice that complies with s. 704.21, the tenant shall not be liable for any rent after the end of the month following the month in which he or she provides the notice or removes from the premises, whichever is later. The tenant's liability for rent under this subsection is subject to the landlord's duty to mitigate damages as provided in s. 704.29 (2).

(3) TERMINATION OF TENANCY BY LANDLORD. (a) In this subsection, "offending tenant" is a tenant whose tenancy is being terminated under this subsection.

(b) A landlord may terminate the tenancy of an offending tenant if all of the following apply:

1. The offending tenant commits one or more acts, including verbal threats, that cause another tenant, or a child of that other tenant, who occupies a dwelling unit in the same single−family rental unit, multiunit dwelling, or apartment complex as the offending tenant to face an imminent threat of serious physical harm from the offending tenant if the offending tenant remains on the premises.

2. The offending tenant is the named offender in any of the following:

a. An injunction order under s. 813.12 (4) protecting the other tenant from the offending tenant.

b. An injunction order under s. 813.122 protecting the child of the other tenant from the offending tenant.

c. An injunction order under s. 813.125 (4) protecting the other tenant or the child of the other tenant from the offending tenant, based on the offending tenant's engaging in an act that would constitute sexual assault under s. 940.225, 948.02, or 948.025, or stalking under s. 940.32, or attempting or threatening to do the same.

d. A condition of release under ch. 969 ordering the offending tenant not to contact the other tenant.

e. A criminal complaint alleging that the offending tenant sexually assaulted the other tenant or the child of the other tenant under s. 940.225, 948.02, or 948.025.

f. A criminal complaint alleging that the offending tenant stalked the other tenant or the child of the other tenant under s. 940.32.

g. A criminal complaint that was filed against the offending tenant as a result of the offending tenant being arrested for committing a domestic abuse offense against the other tenant under s. 968.075.

3. The landlord gives the offending tenant written notice that complies with s. 704.21 requiring the offending tenant to vacate on or before a date that is at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the offending tenant to contest the termination of tenancy in an eviction action under ch. 799. If the offending tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the landlord by the greater preponderance of the credible evidence of the allegations against the offending tenant.

(4) CHANGING LOCKS. (a) Subject to pars. (b) and (c), regardless of whether sub. (1) applies, at the request of a residential tenant who provides the landlord with a certified copy of a document specified in sub. (1) (b) 1. to 7., a landlord shall change the locks to the tenant's premises.

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

(b) A landlord shall have the locks changed, or may give the tenant permission to change the locks, within 48 hours after receiving a request and certified copy under par. (a). The tenant shall be responsible for the cost of changing the locks. If the landlord gives the tenant permission to change the locks, within a reasonable time after any lock has been changed the tenant shall provide the landlord with a key for the changed lock.

(c) 1. If the person who is the subject of the document provided to the landlord under par. (a) is also a tenant of the specific premises for which the locks are requested to be changed, the landlord is not required to change the locks under this subsection unless the document provided by the tenant requesting that the locks be changed is any of the following:

a. A document specified in sub. (1) (b) 1., 2., or 3. that directs the tenant who is the subject of the document to avoid the residence of the tenant requesting that the locks be changed.

b. A document specified in sub. (1) (b) 4. that orders the tenant who is the subject of the document not to contact the tenant requesting that the locks be changed.

2. Nothing in this subsection shall be construed to relieve a tenant who is the subject of the document provided to the landlord under par. (a) from any obligation under a rental agreement or any other liability to the landlord.

(d) A landlord is not liable for civil damages for any action taken to comply with this subsection.

History: 2007 a. 184; 2009 a. 117.

704.165 Termination of tenancy at death of tenant. (1) (a) Except as provided in par. (b), if a residential tenant dies, his or her tenancy is terminated on the earlier of the following:

1. Sixty days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death.

2. The expiration of the term of the rental agreement.

(b) Notwithstanding s. 704.19, in the case of the death of a residential periodic tenant or tenant at will, the tenancy is terminated 60 days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death.

(2) The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. Any liability of the deceased tenant or his or her estate for rent under this subsection is subject to the landlord's duty to mitigate damages as provided in s. 704.29 (2).

(3) Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

(4) A landlord under this section may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

History: 2009 a. 323.

704.17 Notice terminating tenancies for failure to pay rent or other breach by tenant. (1) MONTH−TO−MONTH AND WEEK−TO−WEEK TENANCIES. (a) If a month−to−month tenant or a week−to−week tenant fails to pay rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. A month−to−month tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice requiring the tenant to vacate on or before a date at least 14 days after the giving of the notice.

(b) If a month−to−month tenant commits waste or a material violation of s. 704.07 (3) or breaches any covenant or condition of the tenant's agreement, other than for payment of rent, the tenancy can be terminated if the landlord gives the tenant notice requiring the tenant to vacate on or before a date at least 14 days after the giving of the notice.

(c) A property owner may terminate the tenancy of a week−to−week or month−to−month tenant if the property owner receives written notice from a law enforcement agency, as defined in s. 165.83 (1) (b), or from the office of the district attorney, that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice requiring the tenant to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency or the office of the district attorney that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(2) TENANCIES UNDER A LEASE FOR ONE YEAR OR LESS, AND YEAR−TO−YEAR TENANCIES. (a) If a tenant under a lease for a term of one year or less, or a year−to−year tenant, fails to pay any installment of rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. If a tenant has been given such a notice and has paid the rent on or before the specified date, or been permitted by the landlord to remain in possession contrary to such notice, and if within one year of any prior default in payment of rent for which notice was given the tenant fails to pay a subsequent installment of rent on time, the tenant's tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(b) If a tenant under a lease for a term of one year or less, or a year−to−year tenant, commits waste or a material violation of s. 704.07 (3) or breaches any covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord gives the tenant a notice requiring the tenant to remedy the default or vacate the premises on or before a date at least 5 days after the giving of the notice, and if the tenant fails to comply with such notice. A tenant is deemed to be complying with the notice if promptly upon receipt of such notice the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for the tenant's breach. If within one year from the giving of any such notice, the tenant again commits waste or breaches the same or any other covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord, prior to the tenant's remedying the waste or breach, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(c) A property owner may terminate the tenancy of a tenant who is under a lease for a term of one year or less or who is a year−to−year tenant if the property owner receives written notice from a law enforcement agency, as defined in s. 165.83 (1) (b), or from the office of the district attorney, that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice requiring the tenant to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency or the office of the district attorney that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

(d) This subsection does not apply to week−to−week or month−to−month tenants.

(3) LEASE FOR MORE THAN ONE YEAR. (a) If a tenant under a lease for more than one year fails to pay rent when due, or commits waste, or breaches any other covenant or condition of the tenant's lease, the tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay the rent, repair the waste, or otherwise comply with the lease on or before a date at least 30 days after the giving of the notice, and if the tenant fails to comply with the notice. A tenant is deemed to be complying with the notice if promptly upon receipt of the notice the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for the tenant's breach; but in case of failure to pay rent, all rent due must be paid on or before the date specified in the notice.

(b) A property owner may terminate the tenancy of a tenant who is under a lease for a term of more than one year if the property owner receives written notice from a law enforcement agency, as defined in s. 165.83 (1) (b), or from the office of the district attorney, that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice to vacate on or before a date at least 5 days after the giving of the notice. The notice shall state the basis for its issuance and the right of the tenant to contest the termination of tenancy in an eviction action under ch. 799. If the tenant contests the termination of tenancy, the tenancy may not be terminated without proof by the property owner by the greater preponderance of the credible evidence of the allegation in the notice from the law enforcement agency or the office of the district attorney that a nuisance under s. 823.113 (1) or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

(4) FORM OF NOTICE AND MANNER OF GIVING. Notice must be in writing and given as specified in s. 704.21. If so given, the tenant is not entitled to possession or occupancy of the premises after the date of termination specified in the notice.

(5) CONTRARY PROVISION IN THE LEASE. Provisions in the lease or rental agreement for termination contrary to this section are invalid except in leases for more than one year.

History: 1981 c. 286; 1993 a. 139, 486; 1995 a. 267; 2005 a. 281; 2011 a. 143.

Only a limited number of defenses may be raised in an eviction action, including defenses as to the landlord's title to the premises and whether the eviction was in retaliation for the tenant's reporting housing violations, but not including violations of federal antitrust and state franchise laws — as well as public policy defenses. Clark Oil & Refining Corp. v. Leistikow, 69 Wis. 2d 226, 230 N.W.2d 736 (1975).

Absent notice of termination, the violation of the terms of a lease that required landlord permission for long−term guests did not result in the tenants losing their rights to possession of the property. Consequently the tenants' guests were on the premises with the legal possessor's permission and were not trespassers. Johnson v. Blackburn, 220 Wis. 2d 260, 582 N.W.2d 488 (Ct. App. 1998), 97−1414.

704.19 Notice necessary to terminate periodic tenancies and tenancies at will. (1) SCOPE OF SECTION. The following types of tenancies, however created, are subject to this section:

(a) A periodic tenancy, whether a tenancy from year−to−year, from month−to−month, or for any other periodic basis according to which rent is regularly payable; and

(b) A tenancy at will.

(2) REQUIREMENT OF NOTICE. (a) A periodic tenancy or a tenancy at will can be terminated by either the landlord or the tenant only by giving to the other party written notice complying with this section, unless any of the following conditions is met:

1. The parties have agreed expressly upon another method of termination and the parties' agreement is established by clear and convincing proof.

2. Termination has been effected by a surrender of the premises.

3. Subsection (6) applies.

(b) 1. A periodic tenancy can be terminated by notice under this section only at the end of a rental period. In the case of a tenancy from year−to−year the end of the rental period is the end of the rental year even though rent is payable on a more frequent basis.

2. Notwithstanding subd. 1., nothing in this section prevents termination of a tenancy before the end of a rental period because of an imminent threat of serious physical harm, as provided in s. 704.16, or for nonpayment of rent or breach of any other condition of the tenancy, as provided in s. 704.17.

(3) LENGTH OF NOTICE. At least 28 days' notice must be given except in the following cases: If rent is payable on a basis less than monthly, notice at least equal to the rent−paying period is sufficient; all agricultural tenancies from year−to−year require at least 90 days' notice.

(4) CONTENTS OF NOTICE. Notice must be in writing, formal or informal, and substantially inform the other party to the landlord−tenant relation of the intent to terminate the tenancy and the date of termination. A notice is not invalid because of errors in the notice which do not mislead, including omission of the name of one of several landlords or tenants.

(5) EFFECT OF INACCURATE TERMINATION DATE IN NOTICE. If a notice provides that a periodic tenancy is to terminate on the first day of a succeeding rental period rather than the last day of a rental period, and the notice was given in sufficient time to terminate the tenancy at the end of the rental period, the notice is valid; if the notice was given by the tenant, the landlord may require the tenant to remove on the last day of the rental period, but if the notice was given by the landlord the tenant may remove on the last day specified in the notice. If a notice specified any other inaccurate termination date, because it does not allow the length of time required under sub. (3) or because it does not correspond to the end of a rental period in the case of a periodic tenancy, the notice is valid but not effective until the first date which could have been properly specified in such notice subsequent to the date specified in the notice, but the party to whom the notice is given may elect to treat the date specified in the notice as the legally effective date. If a notice by a tenant fails to specify any termination date, the notice is valid but not effective until the first date which could have been properly specified in such notice as of the date the notice is given.

(6) TENANT MOVING OUT WITHOUT NOTICE. If any periodic tenant vacates the premises without notice to the landlord and fails to pay rent when due for any period, such tenancy is terminated as of the first date on which it would have terminated had the landlord been given proper notice on the day the landlord learns of the removal.

(7) WHEN NOTICE GIVEN. Notice is given on the day specified below, which is counted as the first day of the notice period:

(a) The day of giving or leaving under s. 704.21 (1) (a) and (2) (a) and (b).

(b) The day of leaving or affixing a copy or the date of mailing, whichever is later, under s. 704.21 (1) (b) and (c).

(c) The 2nd day after the day of mailing if the mail is addressed to a point within the state, and the 5th day after the day of mailing in all other cases, under s. 704.21 (1) (d) and (2) (c).

(d) The day of service under s. 704.21 (1) (e) and (2) (d).

(e) The day of actual receipt by the other party under s. 704.21 (5).

(8) EFFECT OF NOTICE. If a notice is given as required by this section, the tenant is not entitled to possession or occupancy of the premises after the date of termination as specified in the notice.

History: 1993 a. 486; 1995 a. 225; 2001 a. 103; 2007 a. 184.

A landlord cannot evict a tenant solely because the tenant has reported building code violations. Dickhut v. Norton, 45 Wis. 2d 389, 173 N.W.2d 297 (1970).

Retaliatory eviction as a defense. 54 MLR 239.

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

704.21 Manner of giving notice. (1) NOTICE BY LANDLORD. Notice by the landlord or a person in the landlord's behalf must be given under this chapter by one of the following methods:

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

(a) By giving a copy of the notice personally to the tenant or by leaving a copy at the tenant's usual place of abode in the presence of some competent member of the tenant's family at least 14 years of age, who is informed of the contents of the notice;

(b) By leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and by mailing a copy by regular or other mail to the tenant's last−known address;

(c) If notice cannot be given under par. (a) or (b) with reasonable diligence, by affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read and by mailing a copy by regular or other mail to the tenant's last−known address;

(d) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last−known address;

(e) By serving the tenant as prescribed in s. 801.11 for the service of a summons.

(2) NOTICE BY TENANT. Notice by the tenant or a person in the tenant's behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the landlord or to any person who has been receiving rent or managing the property as the landlord's agent, or by leaving a copy at the landlord's usual place of abode in the presence of some competent member of the landlord's family at least 14 years of age, who is informed of the contents of the notice;

(b) By giving a copy of the notice personally to a competent person apparently in charge of the landlord's regular place of business or the place where the rent is payable;

(c) By mailing a copy by registered or certified mail to the landlord at the landlord's last−known address or to the person who has been receiving rent or managing the property as the landlord's agent at that person's last−known address;

(d) By serving the landlord as prescribed in s. 801.11 for the service of a summons.

(3) CORPORATION OR PARTNERSHIP. If notice is to be given to a corporation notice may be given by any method provided in sub. (1) or (2) except that notice under sub. (1) (a) or (2) (a) may be given only to an officer, director, registered agent or managing agent, or left with an employee in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in sub. (1) or (2) except that notice under sub. (1) (a) or (2) (a) may be given only to a general partner or managing agent of the partnership, or left with an employee in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least 14 years of age, who is informed of the contents of the notice.

(4) NOTICE TO ONE OF SEVERAL PARTIES. If there are 2 or more landlords or 2 or more cotenants of the same premises, notice given to one is deemed to be given to the others also.

(5) EFFECT OF ACTUAL RECEIPT OF NOTICE. If notice is not properly given by one of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the party alleging actual receipt to prove the fact by clear and convincing evidence.

History: Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1993 a. 486.

704.22 Service of process in residential tenancy on nonresident party. (1) A party to a residential tenancy in this state who is not a resident of this state shall designate an agent to accept service of process in this state for an action involving the tenancy. The agent shall be a resident of this state or a corporation authorized to do business in this state. If a party is a corporation, the agent is the corporation's registered agent.

(2) Designation of an agent under sub. (1) shall be in writing and filed with the department of financial institutions.

History: 1981 c. 300; 1995 a. 27.

704.23 Removal of tenant on termination of tenancy. If a tenant remains in possession without consent of the tenant's landlord after termination of the tenant's tenancy, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

History: 1993 a. 486.

704.25 Effect of holding over after expiration of lease; removal of tenant. (1) REMOVAL AND RECOVERY OF DAMAGES. If a tenant holds over after expiration of a lease, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

(2) CREATION OF PERIODIC TENANCY BY HOLDING OVER. (a) *Nonresidential leases for a year or longer.* If premises are leased for a year or longer primarily for other than private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a year−to−year basis.

(b) *All other leases.* If premises are leased for less than a year for any use, or if leased for any period primarily for private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a month−to−month basis; but if such lease provides for a weekly or daily rent, the landlord may hold the tenant only on the periodic basis on which rent is computed.

(c) *When election takes place.* Acceptance of rent for any period after expiration of a lease or other conduct manifesting the landlord's intent to allow the tenant to remain in possession after the expiration date constitutes an election by the landlord under this section unless the landlord has already commenced proceedings to remove the tenant.

(3) TERMS OF TENANCY CREATED BY HOLDING OVER. A periodic tenancy arising under this section is upon the same terms and conditions as those of the original lease except that any right of the tenant to renew or extend the lease, or to purchase the premises, or any restriction on the power of the landlord to sell without first offering to sell the premises to the tenant, does not carry over to such a tenancy.

(4) EFFECT OF CONTRARY AGREEMENT. This section governs except as the parties agree otherwise either by the terms of the lease itself or by an agreement at any subsequent time.

(5) HOLDOVER BY ASSIGNEE OR SUBTENANT. If an assignee or subtenant holds over after the expiration of the lease, the landlord may either elect to:

(a) Hold the assignee or subtenant or, if he or she participated in the holding over, the original tenant as a periodic tenant under sub. (2); or

(b) Remove any person in possession and recover damages from the assignee or subtenant or, if the landlord has not been accepting rent directly from the assignee or subtenant, from the original tenant.

(6) NOTICE TERMINATING A TENANCY CREATED BY HOLDING OVER. Any tenancy created pursuant to this section is terminable under s. 704.19.

History: 1983 a. 36.

Upon the landlord's acceptance of a holdover tenant's monthly rent payment, both parties were bound to a one−year tenancy, on the same terms and conditions as set forth in the expired lease. The existence of a one−year holdover tenancy does not mean, however, that the landlord could not subsequently accept a surrender of the premises from the tenant and release the tenant from his or her obligations as a holdover tenant. Vander Wielen v. Van Asten, 2005 WI App 220, 287 Wis. 2d 726, 706 N.W.2d 123, 04−1788.

704.27 Damages for failure of tenant to vacate at end of lease or after notice. If a tenant remains in possession without consent of the tenant's landlord after expiration of a lease or termination of a tenancy by notice given by either the landlord or the tenant, or after termination by valid agreement of the parties, the landlord shall, at the landlord's discretion, recover from the tenant damages suffered by the landlord because of the failure of the tenant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

time the tenant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the tenant for the prior rental period, and includes the money equivalent of any obligations undertaken by the tenant as part of the rental agreement, such as payment of taxes, insurance and repairs. Nothing in this section prevents a landlord from seeking and recovering any other damages to which the landlord may be entitled.

History: 1993 a. 486; 2011 a. 143.

This section requires a minimum award of double rent when greater damages have not been proved. Vincenti v. Stewart, 107 Wis. 2d 651, 321 N.W.2d 340 (Ct. App. 1982).

"Rental value" includes only those obligations that the tenant is required to pay during a holdover period regardless of whether or not the tenant uses the premises. Univest Corp. v. General Split Corp. 148 Wis. 2d 29, 435 N.W.2d 234 (1989).

704.28 Withholding from and return of security deposits. (1) STANDARD WITHHOLDING PROVISIONS. When a landlord returns a security deposit to a tenant after the tenant vacates the premises, the landlord may withhold from the full amount of the security deposit only amounts reasonably necessary to pay for any of the following:

(a) Except as provided in sub. (3), tenant damage, waste, or neglect of the premises.

(b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

(c) Payment that the tenant owes under the rental agreement for utility service provided by the landlord but not included in the rent.

(d) Payment that the tenant owes for direct utility service provided by a government−owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.

(e) Unpaid monthly municipal permit fees assessed against the tenant by a local unit of government under s. 66.0435 (3), to the extent that the landlord becomes liable for the tenant's nonpayment.

(f) Any other payment for a reason provided in a nonstandard rental provision document described in sub. (2).

(2) NONSTANDARD RENTAL PROVISIONS. Except as provided in sub. (3), a rental agreement may include one or more nonstandard rental provisions that authorize the landlord to withhold amounts from the tenant's security deposit for reasons not specified in sub. (1) (a) to (e). Any such nonstandard rental provisions shall be provided to the tenant in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS." The landlord shall specifically identify and discuss each nonstandard rental provision with the tenant before the tenant enters into a rental agreement with the landlord. If the tenant signs a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed the nonstandard rental provision with the tenant and that the tenant has agreed to it.

(3) NORMAL WEAR AND TEAR. This section does not authorize a landlord to withhold any amount from a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law.

(4) TIMING FOR RETURN. A landlord shall deliver or mail to a tenant the full amount of any security deposit paid by the tenant, less any amounts that may be withheld under subs. (1) and (2), within 21 days after any of the following:

(a) If the tenant vacates the premises on the termination date of the rental agreement, the date on which the rental agreement terminates.

(b) If the tenant vacates the premises before the termination date of the rental agreement, the date on which the tenant's rental agreement terminates or, if the landlord rerents the premises before the tenant's rental agreement terminates, the date on which the new tenant's tenancy begins.

(c) If the tenant vacates the premises after the termination date of the rental agreement, the date on which the landlord learns that the tenant has vacated the premises.

(d) If the tenant is evicted, the date on which a writ of restitution is executed or the date on which the landlord learns that the tenant has vacated the premises, whichever occurs first.

History: 2011 a. 143.

704.29 Recovery of rent and damages by landlord; mitigation. (1) SCOPE OF SECTION. If a tenant unjustifiably removes from the premises prior to the effective date for termination of the tenant's tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease, the landlord can recover rent and damages except amounts which the landlord could mitigate in accordance with this section, unless the landlord has expressly agreed to accept a surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease, a periodic tenant, or an assignee of either.

(2) MEASURE OF RECOVERY. (a) In this subsection, "reasonable efforts" mean those steps that the landlord would have taken to rent the premises if they had been vacated in due course, provided that those steps are in accordance with local rental practice for similar properties.

(b) In any claim against a tenant for rent and damages, or for either, the amount of recovery is reduced by the net rent obtainable by reasonable efforts to rerent the premises. In the absence of proof that greater net rent is obtainable by reasonable efforts to rerent the premises, the tenant is credited with rent actually received under a rerental agreement minus expenses incurred as a reasonable incident of acts under sub. (4), including a fair proportion of any cost of remodeling or other capital improvements. In any case the landlord can recover, in addition to rent and other elements of damage, all reasonable expenses of listing and advertising incurred in rerenting and attempting to rerent, except as taken into account in computing the net rent under the preceding sentence. If the landlord has used the premises as part of reasonable efforts to rerent, under sub. (4) (c), the tenant is credited with the reasonable value of the use of the premises, which is presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it is reasonable for the landlord to rent the other premises for the landlord's own account in preference to those vacated by the defaulting tenant.

(3) BURDEN OF PROOF. The landlord must allege and prove that the landlord has made efforts to comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of any offer to rent the premises or a part thereof was not reasonable, that any terms and conditions upon which the landlord has in fact rerented were not reasonable, and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with sub. (4) (c); the tenant also has the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by rerenting.

(4) ACTS PRIVILEGED IN MITIGATION OF RENT OR DAMAGES. The following acts by the landlord do not defeat the landlord's right to recover rent and damages and do not constitute an acceptance of surrender of the premises:

(a) Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises;

(b) Rerenting the premises or a part thereof, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease;

(c) Use of the premises by the landlord until such time as rerenting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that the landlord will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period;

(d) Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

unequivocally demonstrate an intent to release the defaulting tenant.

History: 1993 a. 486; 1995 a. 85.

Acceptance of the surrender of premises terminated the lease and deprived the landlord of the right to seek future rent. First Wisconsin Trust Co. v. L. Wiemann Co. 93 Wis. 2d 258, 286 N.W.2d 360 (1980).

A court's retention of jurisdiction to determine damages for rents not yet due is permitted. Mitigation expenses that may be recovered are limited to necessary expenses incurred and do not include compensation for time spent in mitigating damages. Kersten v. H.C. Prange Co. 186 Wis. 2d 49, 520 N.W.2d 99 (Ct. App. 1994).

A landlord may elect to accept the surrender of premises by a tenant, which terminates any further obligation of the tenant under the lease, but which also relieves the landlord from the obligation to apply payments from the new tenant to the former tenant's unpaid rental obligations. CCS North Henry, LLC v. Tully, 2001 WI App 8, 240 Wis. 2d 534, 624 N.W.2d 847, 00−0546.

Whenever a landlord does not, by word or deed, accept the surrender of leased premises following a tenant's removal, the landlord must mitigate damages by attempting to re−rent the premises. If a landlord elects to hold the tenant to the tenancy, the landlord's re−renting the premises to another cannot, standing alone, constitute an acceptance of surrender of the premises. A landlord's actions in dealing exclusively with a successor tenant, proposing a new long−term lease to the successor, accepting higher rent from the successor as called for in the proposed lease, and failing to communicate in any way to the tenant that she deemed him responsible for the remainder of the tenancy clearly evidenced an intent to accept the tenant's surrender of the premises. Vander Wielen v. Van Asten, 2005 WI App 220, 287 Wis. 2d 726, 706 N.W.2d 123, 04−1788.

A landlord has an obligation to rerent when a tenant breaches a lease. Specific performance is not a proper remedy. Chi−Mil. Corp. v. W. T. Grant Co. 422 F. Supp. 46 (1976).

704.31 Remedy on default in long terms; improvements. (1) If there is a default in the conditions in any lease or a breach of the covenants thereof and such lease provides for a term of 30 years or more and requires the tenant to erect or construct improvements or buildings upon the land demised at the tenant's own cost and exceeding in value the sum of $50,000, and such improvements have been made and the landlord desires to terminate the lease and recover possession of the property described therein freed from all liens, claims or demands of such lessee, the landlord may, in case of any breach or default, commence an action against the tenant and all persons claiming under the tenant to recover the possession of the premises leased and proceed in all respects as if the action was brought under the statute to foreclose a mortgage upon real estate, except that no sale of the premises shall be ordered.

(2) The judgment shall determine the breach or default complained of, fix the amount due the landlord at such time, and state the several amounts to become due within one year from the entry thereof, and provide that unless the amount adjudged to be due from the tenant, with interest thereon as provided in the lease or by law, shall be paid to the landlord within one year from the entry thereof and the tenant shall, within such period, fully comply with the judgment requiring the tenant to make good any default in the conditions of the lease, that the tenant and those claiming under the tenant shall be forever barred and foreclosed of any title or interest in the premises described in the lease and that in default of payment thereof within one year from the entry of the judgment the tenant shall be personally liable for the amount thereof. During the one−year period ensuing the date of the entry of the judgment the possession of the demised premises shall remain in the tenant and the tenant shall receive the rents, issues and profits thereof; but if the tenant fails to comply with the terms of the judgment and the same is not fully satisfied, and refuses to surrender the possession of the demised premises at the expiration of said year, the landlord shall be entitled to a writ of assistance or execution to be issued and executed as provided by law.

(3) This section does not apply to a lease to which a local professional baseball park district created under subch. III of ch. 229 or the Fox River Navigational System Authority is a party.

History: 1993 a. 486; 1995 a. 56; 2001 a. 16; 2009 a. 28; 2011 a. 10.

704.40 Remedies available when tenancy dependent upon life of another terminates. (1) Any person occupying premises as tenant of the owner of a life estate or any person owning an estate for the life of another, upon cessation of the measuring life, is liable to the owner of the reversion or remainder for the reasonable rental value of the premises for any period the occupant remains in possession after termination of the life estate. Rental value as used in this section has the same meaning as rental value defined in s. 704.27.

(2) The owner of the reversion or remainder can remove the occupant in any lawful manner including eviction proceedings under ch. 799 as follows:

(a) If the occupant has no lease for a term, upon terminating the occupant's tenancy by giving notice as provided in s. 704.19;

(b) If the occupant is in possession under a lease for a term, upon termination of the lease or one year after written notice to the occupant given in the manner provided by s. 704.21 whichever occurs first, except that a farm tenancy can be terminated only at the end of a rental year.

(3) The occupant must promptly after written demand give information as to the nature of the occupant's possession. If the occupant fails to do so, the reversioner or remainderman may treat the occupant as a tenant from month−to−month.

History: 1979 c. 32 s. 92 (16); 1993 a. 486.

704.44 Residential rental agreement that contains certain provisions is void. Notwithstanding s. 704.02, a residential rental agreement is void and unenforceable if it does any of the following:

(1m) Allows a landlord to do any of the following because a tenant has contacted an entity for law enforcement services, health services, or safety services:

(a) Increase rent.

(b) Decrease services.

(c) Bring an action for possession of the premises.

(d) Refuse to renew a rental agreement.

(e) Threaten to take any action under pars. (a) to (d).

(2m) Authorizes the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under ch. 799.

(3m) Provides for an acceleration of rent payments in the event of tenant default or breach of obligations under the rental agreement, or otherwise waives the landlord's obligation to mitigate damages as provided in s. 704.29.

(4m) Requires payment by the tenant of attorney fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement. This subsection does not prevent a landlord or tenant from recovering costs or attorney fees under a court order under ch. 799 or 814.

(5m) Authorizes the landlord or an agent of the landlord to confess judgment against the tenant in any action arising under the rental agreement.

(6) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under s. 704.07 or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(7) Imposes liability on a tenant for any of the following:

(a) Personal injury arising from causes clearly beyond the tenant's control.

(b) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This paragraph does not affect ordinary maintenance obligations of a tenant under s. 704.07 or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(8) Waives any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition or to maintain the premises during the tenant's tenancy.

(9) Allows the landlord to terminate the tenancy of a tenant if a crime is committed in or on the rental property, even if the tenant could not reasonably have prevented the crime.

History: 2007 a. 184; 2011 a. 143.

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

704.45 Retaliatory conduct in residential tenancies prohibited. (1) Except as provided in sub. (2), a landlord in a residential tenancy may not increase rent, decrease services, bring an action for possession of the premises, refuse to renew a lease or threaten any of the foregoing, if there is a preponderance of evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant for doing any of the following:

(a) Making a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency.

(b) Complaining to the landlord about a violation of s. 704.07 or a local housing code applicable to the premises.

(c) Exercising a legal right relating to residential tenancies.

(2) Notwithstanding sub. (1), a landlord may bring an action for possession of the premises if the tenant has not paid rent other than a rent increase prohibited by sub. (1).

(3) This section does not apply to complaints made about defects in the premises caused by the negligence or improper use of the tenant who is affected by the action or inaction.

History: 1981 c. 286.

704.50 Disclosure duty; immunity for providing notice about the sex offender registry. (1) Except as provided in sub. (2), a landlord or his or her agent has no duty to disclose to any person in connection with the rental of real property any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(2) If, in connection with the rental of real property, a person requests of a landlord or his or her agent information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the landlord or agent has a duty to disclose such information, if the landlord or agent has actual knowledge of the information.

(3) Notwithstanding sub. (2), the landlord or agent is immune from liability for any act or omission related to the disclosure of information under sub. (2) if the landlord or agent in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

History: 1999 a. 89.

704.90 Self−service storage facilities. (1) DEFINITIONS. In this section:

(a) "Default" means the lessee fails to pay rent or other charges due under a rental agreement for a period of 7 consecutive days after the due date under the rental agreement.

(am) "Last−known address" means the address provided by a lessee to an operator in the most recent rental agreement between the lessee and the operator or the address provided by a lessee to an operator in a written notice of a change of address, whichever address is provided later.

(b) "Leased space" means a self−service storage unit or a space located within a self−service storage facility that a lessee is entitled to use for the storage of personal property on a self−service basis pursuant to a rental agreement and that is not rented or provided to the lessee in conjunction with property for residential use by the lessee.

(c) "Lessee" means a person entitled to the use of a leased space, to the exclusion of others, under a rental agreement, or the person's sublessee, successor or assign.

(d) "Operator" means the owner, lessor or sublessor of a self−service storage facility or of a self−service storage unit, an agent of any of them or any other person who is authorized by the owner, lessor or sublessor to manage the self−service storage facility or unit or to receive rent from a lessee under a rental agreement.

(e) "Personal property" means movable property not affixed to land, including goods, wares, merchandise, motor vehicles, watercraft, household items and furnishings.

(f) "Rental agreement" means a lease or agreement between a lessee and an operator that establishes or modifies any provisions concerning the use of a leased space, including who is entitled to the use of the leased space.

(g) "Self−service storage facility" means real property containing leased spaces but does not include a warehouse or other facility if the operator of the warehouse or facility issues a warehouse receipt, bill of lading or other document of title for personal property stored in the leased spaces.

(h) "Self−service storage unit" means a box, shipping container, or trailer that is leased by a tenant primarily for use as a storage space whether the box, shipping container, or trailer is located at a facility owned or operated by the owner or at a location designated by the tenant.

(2) USE OF LEASED SPACE. (a) An operator may not knowingly permit a leased space to be used for residential purposes.

(b) A lessee may not use a leased space for residential purposes.

(2m) WRITTEN RENTAL AGREEMENT. Every rental agreement shall be in writing and shall contain a provision allowing the lessee to specify the name and last−known address of a person who, in addition to the lessee, the operator is required to notify under sub. (5) (b) 1. If the rental agreement contains a provision that places a limit on the value of property that is stored in the leased space, that provision shall be typed in bold type or underlined type of the same size as the remainder of the agreement.

(3) LIEN AND NOTICE IN RENTAL AGREEMENT. (a) An operator has a lien on all personal property stored in a leased space for rent and other charges related to the personal property, including expenses necessary to the preservation, removal, storage, preparation for sale and sale of the personal property. The lien attaches as of the first day the personal property is stored in the leased space and is superior to any other lien on or security interest in the personal property except for a statutory lien or a security interest that is perfected by filing prior to the first day the personal property is stored in the leased space, a security interest in a vehicle perfected under ch. 342 or a security interest in a boat perfected under ch. 30.

(b) A rental agreement shall state in boldface type that the operator has a lien on personal property stored in a leased space and that the operator may satisfy the lien by selling the personal property, as provided in this section, if the lessee defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(c) If the rental agreement contains a limit on the value of property stored in the lessee's storage space, the limit shall be presumed to be the maximum value of the property stored in that space.

(4) CARE AND CUSTODY. Except as provided in the rental agreement and in this section, a lessee has exclusive care, custody and control of personal property stored in the lessee's leased space.

(4b) LATE FEE. (a) The operator may charge a reasonable late fee for each month a lessee does not pay rent by 5 weekdays after the rent is due if the amount of the late fee is contained in the rental agreement.

(b) A late fee of $20 or 20 percent of the monthly rental amount, whichever is greater, is presumed reasonable. An operator may charge a higher late fee but has the burden of proof that the higher late fee is reasonable.

(4g) DEFAULT OR FAILURE TO PAY AFTER TERMINATION. A lessee who defaults or fails to pay rent for the storage of personal prop-

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

erty abandoned after the termination of the rental agreement is subject to the procedures and remedies in subs. (4r) to (9) and (12).

(4r) DENIAL OF ACCESS; REMOVAL AND STORAGE. (a) If a lessee defaults, an operator may deny the lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a).

(b) After the termination, by expiration or otherwise, of a rental agreement for the use of a leased space by a lessee, an operator may remove personal property remaining in the leased space and store the personal property at another site or within or outside the self−service storage facility or move the self−service storage unit to another site, or the operator may continue to store the personal property in the leased space, and the operator may deny the former lessee access to the personal property until the lessee redeems the personal property under sub. (5) (a). The operator may charge a reasonable rent for storage of the personal property, whether at another site or in the leased space. A former lessee who fails to pay the rent is subject to all procedures and remedies set forth in this section for default.

(5) REDEMPTION AND NOTICE OF OPPORTUNITY TO REDEEM. (a) At any time prior to disposal under sub. (5m) or sale under sub. (6), a lessee may redeem personal property by paying the operator any rent and other charges due. Upon receipt of such payment, the operator shall return the personal property, and thereafter the operator shall have no liability to any person with respect to such personal property.

(b) An operator may not dispose of personal property under sub. (5m) or sell personal property under sub. (6) unless the operator first delivers the following 2 notices:

1. A first notice sent by regular mail to the last−known address of the lessee and the person, if any, specified in the rental agreement under sub. (2m) containing all of the following:

a. Notification that the lessee is in default or has failed to pay rent for the storage of personal property abandoned after the termination of the rental agreement or both.

b. A brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

c. A notice of denial of access to the personal property if such denial is permitted under the terms of the rental agreement or under sub. (4r).

d. The name, street address and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

2. A 2nd notice sent by certified mail or 1st class mail with a certificate of mailing to the last−known address of the lessee containing all of the following:

a. A statement that the operator has a lien on personal property stored in a leased space.

ag. A brief and general description of the personal property subject to the lien that is reasonably adequate to permit the lessee to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

am. A notice of denial of access to the personal property if such denial is permitted under the terms of the rental agreement or under sub. (4r).

b. An itemized statement of the operator's claim for rent and other charges due as of the date of the notice and of additional rent and other charges that will become due prior to sale and the dates when they will become due.

c. A demand for payment of the rent and other charges due within a time period not sooner than 14 days after the date of the notice.

d. A statement that unless the rent and other charges are paid within the time period under subd. 2. c., the personal property may be disposed of if the fair market value of the property is less than $100 or will be sold, a specification of the date, time and place of the sale and a statement that if the property is sold the operator shall apply the proceeds of the sale first to satisfy the lien and shall report and deliver any balance to the state treasurer as provided under ch. 177.

e. The name, street address and telephone number of the operator whom the lessee may contact to redeem the personal property by paying the rent and other charges due.

(5m) DISPOSAL OF CERTAIN PROPERTY. If the fair market value of the personal property that was stored in the lessee's leased space is less than $100, an operator may do any of the following:

(a) Donate the personal property to an organization described in section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under s. 501 (a) of the Internal Revenue Code.

(b) Dispose of the personal property in a solid waste facility.

(c) Have the personal property recycled.

(d) Dispose of the personal property in another manner that is reasonable under the circumstances.

(6) SALE, ADVERTISEMENT OF SALE AND PROCEEDS OF SALE. (a) After the expiration of the time period given in the 2nd notice under sub. (5) (b) 2. c., an operator may sell personal property that was stored in a lessee's leased space to satisfy the lien under sub. (3) (a) in the manner set forth in pars. (b) and (c) if all of the following conditions are met:

2. The operator has complied with the notice requirements under sub. (5) (b).

3. The lessee has failed to redeem the personal property under sub. (5) (a) within the time period specified in the notice under sub. (5) (b) 2. c.

4. An advertisement of the sale is published once a week for 2 consecutive weeks in a newspaper of general circulation where the self−service storage facility or unit is located.

5. The advertisement under subd. 4. contains all of the following:

a. A brief and general description of the personal property reasonably adequate to permit its identification, as provided in the notices under sub. (5) (b).

b. The address of the self−service storage facility or of the operator of the self−service storage unit and the name of the lessee.

6. The sale takes place not sooner than 15 days after the first publication under subd. 4.

7. The sale conforms to the terms of the notices under sub. (5) (b) and to any of the following:

a. The personal property is offered either as a single parcel or multiple parcels at a public sale attended by 3 or more bidders.

b. The personal property has been offered to at least 3 persons who deal in the type of personal property offered for sale and is sold in a private transaction.

c. The personal property is sold in another manner that is commercially reasonable.

8. The sale is held at the self−service storage facility, at the self−service storage unit, or at the nearest suitable place to the place where the personal property is stored.

(b) The operator shall apply the proceeds of the sale first to satisfy the lien under sub. (3) (a). The operator shall report and deliver any balance to the state treasurer as provided under ch. 177.

(c) A purchaser in good faith of personal property sold takes the personal property free and clear of any rights of any person against whom the lien under sub. (3) (a) was valid and any rights of any other lienholder, regardless of any noncompliance with the requirements of this section by any person.

Electronic reproduction of 2011−12 Wis. Stats. database, current through February 1, 2013.

(7) NOTICE; PRESUMPTION OF DELIVERY. Notice by mailing under sub. (5) (b) is presumed delivered if deposited with the U.S. postal service, properly addressed to the last−known address of the lessee or person specified in the rental agreement under sub. (2m) with postage prepaid.

(8) SUPPLEMENTAL NATURE OF SECTION. This section does not impair or affect in any way the right of parties to create liens by special contract or agreement, nor does it impair or affect any lien not arising under this section, whether the other lien is statutory or of any other nature.

(9) RULES. The department of agriculture, trade and consumer protection may promulgate rules necessary to carry out the purposes of this section.

(10) PENALTIES. (a) Except as provided in par. (b), any person who violates this section or any rule promulgated under this section may be required to forfeit not more than $1,000 for the first offense and may be required to forfeit not more than $3,000 for the 2nd or any later offense within a year. Each day of continued violation constitutes a separate offense. The period shall be measured by using the dates of the offenses which resulted in convictions.

(b) Paragraph (a) does not apply to a lessee who violates sub. (4g) or (4r) (b) because he or she defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(c) Forfeitures under par. (a) shall be enforced by action on behalf of the state by the department of justice or by the district attorney of the county where the violation occurs.

(11) DUTIES OF THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION. (a) Except as provided in par. (c), the department of agriculture, trade and consumer protection shall investigate alleged violations of this section and rules promulgated under sub. (9). To facilitate its investigations, the department may subpoena persons and records and may enforce compliance with the subpoenas as provided in s. 885.12.

(b) Except as provided in par. (a), the department may, on behalf of the state, bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section or any rule promulgated under sub. (9).

(c) This subsection does not apply to a lessee who violates sub. (4g) or (4r) (b) because he or she defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement.

(12) RIGHT TO ACTION FOR VIOLATION. In addition to the remedies otherwise provided by law, a lessee injured by a violation of this section or any rule promulgated under sub. (9) may bring a civil action to recover damages together with costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1), and any equitable relief as may be determined by the court.

History: 1987 a. 23; 1991 a. 39; 1995 a. 27; 2005 a. 461; 2009 a. 380; 2011 a. 260 s. 80.

"Any person injured" in sub. (12) is not limited to a "lessee" as defined in sub. (1) (c). This section protects the interests in personal property of persons who are authorized to store their property in a leased space pursuant to the rental agreement, whether or not they are lessees. Cook v. Public Storage, Inc. 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07−2077.

To construe "the address provided by a lessee to an operator in the most recent rental agreement" in sub. (1) (am), to mean the correct address actually provided by a lessee in an information form is more reasonable than to construe it to mean the incorrect address that the operator transferred to the rental agreement. It is more reasonable to place the responsibility on the operator to accurately transfer the address to the rental agreement than on the lessee to catch the operator's mistake. Cook v. Public Storage, Inc. 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07−2077.

"Provided by a lessee" in the definition of "last−known address" in sub. (1) (am), does not expressly require that the lessee provide the address in person. It is more reasonable to construe "the address provided by a lessee" to include an address provided by a person acting on behalf of the lessee who the operator knows is acting on the lessee's behalf than it is to restrict it to the lessee himself or herself. Cook v. Public Storage, Inc. 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07−2077.

While excess proceeds from sales under sub. (6) are presumed abandoned, nothing in ch. 177 suggests that this presumption may not be overcome. Nothing suggests that the holder may continue to hold the excess proceeds even if the person whose property was sold presents himself or herself in person to the holder or otherwise contacts the holder. Cook v. Public Storage, Inc. 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07−2077.

The attorney fees provision in sub. (12) is the incentive for private parties to bring actions to enforce this section. It is unreasonable to read this section to permit a contract provision to eliminate or reduce reasonable attorney fees. The same conclusion applies with respect to compensatory damages. A contract provision preventing punitive damages was against public policy. Cook v. Public Storage, Inc. 2008 WI App 155, 314 Wis. 2d 426, 761 N.W.2d 645, 07−2077.

704.95 Practices regulated by the department of agriculture, trade and consumer protection. Practices in violation of this chapter may also constitute unfair methods of competition or unfair trade practices under s. 100.20. However, the department of agriculture, trade and consumer protection may not issue an order or promulgate a rule under s. 100.20 that changes any right or duty arising under this chapter.

History: 2011 a. 143.