

## **Residential Rental Practices**

### **(ATCP 134)**

#### **A. Background Information**

1. Originated on May 1, 1980 as "Agriculture 134."
2. Changed to ATCP 134 in 1993.
3. Complete revision/overhaul in 1999.

#### **B. Scope of ATCP 134**

1. Only deals with obligations of the landlord/owner – no obligations for tenant.
2. Applies to rental of all dwelling units in State of Wisconsin with some exceptions.

#### **C. Remedies for Violations of ATCP 134**

1. Wisconsin Statutes §100.20(6), §100.26 (3) or §100.26 (3) and/or (6).
  - (a) Dep't of ATCP may investigate any alleged violations.
  - (b) Temporary or permanent injunction.
  - (c) Dep't can make orders to restore person and any monetary loss suffered.
  - (d) Fines of \$25 - \$5000 per offense or 1 year in jail or both.
2. Private Attorney General
  - A person suffering a monetary loss because of a violation of ATCP 134 may sue the violator directly under §100.20(5), Wis. Stats. and **may recover twice the amount of the loss suffered plus the costs and reasonable attorney's fees** incurred by the person damaged.

#### **D. Rental Agreements and Receipts**

- (a) Must be in writing.
- (b) Must provide applicant with written receipt if you accept earnest money or security.
- (c) Must provide tenant with written receipt for payment of rent via cash.

### I. Disclosure Requirements

1. Must provide to tenant in writing the following (unless you have a 4 unit building that is owner occupied):
  - (a) Person authorized to collect or receive rent and manage and maintain the building.
  - (b) Owner of the premises or other person authorized to accept service of legal process and other notices and demands – that person must reside within Wisconsin.
  - (c) Any changes to the above must be delivered to tenant in writing within 10 business days of the change.
2. Code violations and conditions affecting habitability.
3. Utility charges.

### J. Earnest Money Deposits and Credit Check Fees

1. Must return by the end of the next business day after any of the following occurs:
  - (a) Landlord rejects application or refuses to enter into rental agreement;
  - (b) Applicant withdraws their application before Landlord accepts the application;
  - (c) Landlord fails to approve the application by the end of the third business day after acceptance (can be later if tenant agrees in writing – but no more than 21 days after acceptance).
2. Must apply the earnest money as rent or security deposit or return the earnest money.
3. Withholding earnest money.
4. Credit Check/Report Fee.

### K. Security Deposit Withholding

1. Most litigated area of ATCP 134.
2. Provide list of physical damages to unit – Check In-Check Out sheet.
3. Return of security deposit within 21 days after “surrender.”
4. Only list the “slam dunk” deductions in order to avoid possible violation/improper deduction.
5. Certified mail (\$2.30) with return receipt (\$4.42).
6. Last known address.

7. Cannot withhold for normal “wear and tear” — not defined.
  - No automatic carpet cleaning.
8. May only deduct for:
  - (a) Damage, waste or neglect of unit;
  - (b) Unpaid rent;
  - (c) Unpaid utilities that tenant is responsible for;
  - (d) Other reasons as set forth in “Nonstandard Rental Provision.”
9. 21 Day letter deductions should be detailed.
10. Burden is on Landlord to show deductions are reasonable.
11. Photos/video.
12. Meet with tenant for walk-through of unit prior to move-out.
13. If unsure about deduction don’t include it – return security deposit and sue tenant for
  - the money damages (now outside of reach of ATCP 134 and not subject to paying double damages and attorney's fees if you are wrong).
14. If you failed to send 21 Day letter itemizing deductions and did not return security deposit ----- get out your checkbooks as you need to settle ASAP.

### Promises To Repair

1. All promises to repair made prior to before initial rental agreement is entered into must be in writing and a copy given to tenant.
2. Every promise to repair, clean or make improvements must specify the date when they will be completed.
3. Unavoidable delays.

### L.Prohibited Rental Agreement Provisions

1. You cannot have the following provisions as part of your lease:
  - (a) Authorize eviction of tenant from unit other than by judicial eviction proceedings (no “lock out” and no “self-help”);
  - (b) Provide for acceleration of rent payments if tenant defaults or breaches lease;
  - (c) Waive Landlord’s duty to mitigate damages;
  - (d) Relieve Landlord from liability for property damage or personal injuries caused by negligent acts or omissions of the Landlord;
  - (e) Impose liability on tenant for injuries or damages clearly beyond the tenant’s control or any damage caused by natural disasters or by persons other than the tenant or the tenant’s guests or invitees;

(f) Waive any other statutory or legal obligation of Landlord to deliver unit in fit or habitable condition or maintain unit during tenancy;

### M. Prohibited Practices

1. Advertise or rent condemned property.
2. Unauthorized Entry:
  - (a) OK to enter to inspect, repair or show to prospective tenants if provide tenant with 12 hour notice.
  - (b) Only exceptions are if tenant consents to less notice, tenant requests the repairs, a health or safety emergency exists or tenant is absent and Landlord reasonably believes entry needed to protect premises.
  - (c) Entry at reasonable times not set forth above can be added to “Nonstandard Rental Provisions.”
3. Knock and announce rule.
4. Automatic renewal of lease without notice:
  - Cannot enforce automatic renewal of lease unless you remind tenant at least 15 but no more than 30 days in separate written notice of the automatic renewal provision.
5. Confiscating Personal Property:
  - (a) Distrain was outlawed.
  - (b) Landlord can establish a lien on property in “Nonstandard Rental Provisions” but only asking for trouble by doing so.
6. Retaliatory Eviction:
  - (a) Can’t terminate lease or prevent automatic renewal of lease or constructively evict a tenant in retaliation because the tenant has:
    - i. Reported a violation of ATCP 134;
    - ii. Reported a violation of the building or housing code;
    - iii. Asserted or attempted to assert any right specifically afforded to tenants under state or local law.
  - (b) Landlord cannot fail to deliver possession of unit to tenant at the time agreed
    - upon in rental agreement except when Landlord is unable to deliver possession due to circumstances beyond his/her control.
7. Cannot engage in “self-help” eviction – must follow the eviction procedure in Chapter 799, Wis. Stats. Not allowed to change locks even after you have writ – must use Sheriff.
8. Cannot charge a late fee or penalty except as is specifically described in the rental agreement – should put late fees in lease and in Nonstandard rental provisions.

9. Cannot charge a tenant a late fee for the nonpayment of a late fee.
10. Misrepresentations:
  - (a) Cannot misrepresent the following in an attempt to induce the applicant to enter into a rental agreement:
    - i. Location and characteristics of units being offered;
    - ii. Amount of rent or non-rent charges to be paid by tenant;
    - iii. Fail to disclose any non-rent charges which will increase the total amount due from the tenant during the tenancy;
    - iv. No “bait and switch” allowed.

N.Conflict with Local Ordinances

- If any provision in ATCP 134 conflicts with local ordinances then ATCP 134 provision prevails.

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