



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary



Summary of ATCP Chapter 134 Revisions

ATCP 134.01 Scope and application. Retains exemption from coverage of a dwelling unit operated by fraternal or social organizations and the dwelling unit is occupied by a member of the organization, but adds a coverage if the dwelling unit is rented to a non-member. The purpose here is to require that these rules will apply in situations where fraternal or social organizations rent rooms or apartments to the general public.

Retains exemption where a dwelling unit is rented free of charge or as consideration to employees involved in the operation or maintenance of the premises. This exemption applies only while the employment contract is in existence. Upon termination of employment, Chapter 134 will then apply and the tenancy becomes a tenancy at will under Chapter 704. (e.g., resident manager whose employment is terminated but remains as a tenant).

Exempts a dwelling unit (e.g., a motel), that is rented only by tourist or transient occupants (defined as "... persons who occupy a dwelling unit for less than sixty (60) days while traveling away from their permanent place of residence").

ATCP 134.02 Definitions. Rental agreement is now defined as "an oral or written agreement for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on essential terms of 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."

ATCP 134.03 Rental agreements and receipts. The only change here is that a landlord will be required to give a receipt for any cash *rent* payment (current code only requires that the landlord give a receipt for earnest money and security deposit, unless payment is made by check bearing a notation describing the purpose for which it was given, unless a receipt is requested by the tenant).

ATCP 134.04 Disclosure requirements. Requirement that the landlord provide tenants with names and addresses of person or persons authorized to collect or receive rent and manage and maintain the premises and the owner of the premises or other person authorized to accept service of legal process is changed to require that this information must be provided within ten (10) business days of the effective date of any change. The landlord, or the person the landlord designates to accept legal notices must be located in Wisconsin.

Disclosure of code violations and conditions affecting habitability has essentially been retained as is, except that the disclosure requirement if the dwelling unit cannot maintain at least 67 degrees Fahrenheit has been clarified to provide that temperature shall be measured "at the approximate center of the room at mid height between floor and ceiling." The purpose of this is to eliminate the complaint that the dwelling unit does not maintain 67 degrees when the temperature is taken on an outer wall near the floor and by a drafty window or next to a radiator.

ATCP 134.05 Earnest money deposits and credit check fees. Landlords must identify the dwelling unit(s) prospective tenants are being considered for and must also comply with the disclosure requirements under ATCP 134.04(2) & (3) for each dwelling unit listed prior to accepting any earnest money.

A provision has been added that if the landlord rejects a rental application or if the applicant withdraws a rental application prior to a rental agreement being entered into, the entire amount of any earnest money is to be refunded no later than the end of the next business day. If an application has not been accepted within 3 *business* days, the landlord must refund the earnest money. However, the landlord and tenant may agree to extend the time period for acceptance up to 21 *calendar* days. This agreement may be entered into at any time during the application process, including at the time that the application is submitted. *Of course, if the landlord does not require earnest money with the application, this provision doesn't apply.*

Section 134.05 (3) clarifies that a landlord may withhold from earnest money if the prospective tenant fails to enter into a rental agreement after being approved for tenancy (unless the landlord has significantly altered the rental terms previously disclosed to the tenant), and that the withholding may only be for an amount to compensate the landlord for *actual costs* and damages resulting from the tenant's failure to enter into a rental agreement. The landlord *may not* withhold for lost rents unless the landlord has made a reasonable effort to mitigate those losses as provided under s. 704.129, Stats.

Section 134.05 (4) has been added to allow the landlord to require the prospective tenant to pay the actual cost, up to \$20, to obtain a consumer credit report on the prospective tenant from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, provided (a) the landlord has notified the tenant in advance of the charge and (b) the landlord gives a copy of the report to the prospective tenant. If the prospective tenant provides a credit report that is current to within 30 days, the landlord may not charge the prospective tenant for a new report. However, the landlord may obtain a more current report at his or her expense. **CAUTION:** *This provision allows landlords to charge this fee only for reports obtained from one of the three national credit reporting agencies or their local affiliates. Landlords may not charge for reports received from third party resellers, such as those found on the Internet.*

ATCP 134.06. Security deposits. The requirement that the landlord disclose to the new tenant what deductions were made from the previous tenant's security deposit for physical damages or defects has been modified. Now, this disclosure need only be made when requested by the new tenant. The landlord is, however, required to notify the tenant in writing that he or she has the right to make such a request, which the landlord may require be made in writing. Presumably this notification may be made on the application form. The landlord must then advise the new tenant of previous deductions within 30 days after the landlord receives the request or 7 days after the landlord notifies the previous tenant of the deductions, whichever is later.

Section 134.06 (2) (a) clarifies that the landlord will be in compliance if the security deposit refund, or an accounting of any deductions, is *delivered or mailed* on the twenty-first day *after surrender of the premise*, which is now clearly defined as "the last day of the rental agreement," unless;

- (a) the tenant vacates the premises *before* the last day of the rental agreement and notifies the landlord *in writing*, then surrender occurs on the date the landlord receives the written notice that the tenant has vacated the premises, or;
- (b) the tenant vacates the premises *after* the last day of the rental agreement, then surrender occurs on the earlier date (1) the landlord receives written notice that the tenant has vacated; (2) the landlord knows the tenant has vacated, or;
- (c) a writ of restitution is executed because the tenant was evicted.

This means that tenants who vacate early must then notify the landlord, in writing that they have vacated for their notice to be effective. If notice of vacating is given by mail, then receipt is effective on the second day after the date of mailing. Where a court ordered eviction occurs, then surrender occurs when the writ is executed or the date the landlord knows when the tenant has vacated, whichever occurs first.

* [(Note: if repair costs are not known within 21 days, a written accounting must still be provided. In this case, a "good faith estimate" may be made.)

A note was added under Section 134.06 (2) (a) clarifying that a landlord may collect more than one month's prepaid rent. However, if the landlord holds more than one month's prepaid rent when the tenant surrenders the premises, the landlord must treat that excess as a security deposit.

Section 134.06 (2) (d) specifies that a security deposit refund check, draft or money order must be made payable to all tenants who are parties to the rental agreement, unless the tenants designate a payee in writing. This designation may be made at any time during the term of the rental agreement. Section 134.06 (2) (e) provides that tenant acceptance of a partial payment is not considered payment in full. (Codifies that "satisfaction and accord" shall not apply to security deposit refunds; i.e., even if the landlord writes on the check that a partial refund is "payment in full," tenant may still bring suit for the remainder if he or she feels entitled to it. This provision also applies to earnest money refunds. See above.)

Section 134.06 (3) allowing deductions from a security deposit that are in addition to the standard items remains intact, except that the method for doing so in "other than a form provision" has been eliminated. Instead, such additional items are to be listed in a separate document entitled "NONSTANDARD RENTAL PROVISIONS," which the landlord provides to the tenant. The landlord must specifically discuss each nonstandard provision with the tenant before the tenant enters into a rental agreement. If the tenant signs or initials a nonstandard rental provision, it is rebuttably presumed that the landlord has done so. These provisions may be pre-printed.

Nothing in this section allows the landlord to deduct for "normal wear and tear" or for other damages or losses for which the tenant cannot reasonably be held responsible under applicable law. The Department has added a note to this section specifically citing as examples that a landlord may not withhold for routine painting or carpet cleaning, where there is no unusual damage caused by tenant abuse. A landlord may have an agreement with the tenant that he or she is to clean the carpet or pay you to have it done, but landlords may not have an agreement which allow deductions for the cost of carpet cleaning or painting from a security deposit if the tenant does not pay.

ATCP 134.09 Prohibited practices. Section 134.09 (2) (c) permits landlord and tenant to agree that a landlord may enter a dwelling unit for reasons other than advance notice, emergency reasons or in the event tenant is absent and landlord needs to enter to protect the premises, by adding such reasons to the NONSTANDARD RENTAL PROVISIONS document. Section 134.09 (4) (b) allows the landlord and tenant to agree to a lien agreement securing a tenant's rental obligations with his or her personal property by adding the agreement to the NONSTANDARD RENTAL PROVISIONS document.

Section 134.09 (7) is a new provision that prohibits a landlord from authorizing eviction or exclusion of a tenant the premises other than by judicial eviction procedures as provided in Wis. Stats. 799.

Section 134.09 (8) is a new provision that regulates late fees and penalties. Under this provision, all payments must be applied toward the rent due and then the remaining balance, if any, to any outstanding late fees or penalties. It further provides that no landlord may assess a fee or penalty for non-payment of a late rent fee or penalty. The intent here is to prohibit situations where a tenant is late one month and a late fee is added; the following month the

tenant pays on time, but doesn't include the previous month's late fee. The landlord then applies the first dollars to the late fees, meaning that the tenant has not paid his entire rent for the second month. The landlord then takes the position that his rent is late again and adds another late fee. Not only is this provision reasonable, but it also is now clear that late fees may, in fact, be charged. Landlords may be able deduct unpaid late fees from the security deposit by making that a **NONSTANDARD RENTAL PROVISION**.

Section 134.09(9) prohibits misrepresentations by landlords. Under this rule, no landlord may:

- * Misrepresent the location, characteristics or equivalency of dwelling units offered by the landlord.
- * Misrepresent the amount of rent to be paid by a prospective tenant.
- * Fail to disclose, when advising the prospective tenant of how much the rent will be, the existence of any non-rent charges which will increase the total amount which the tenant would have to pay.
- * Engage in "bait and switch" practices by misrepresenting to any person, as part of a plan or scheme to rent a dwelling unit to that person, that the person is being considered as a prospective tenant for a different dwelling unit.

EFFECTIVE DATE: The amended rules apply to rental agreements entered into, renewed or extended after January 1, 1999, and continuing periodic tenancies (e.g., month-to-month) beginning with the first rent-paying period beginning after January 1, 1999.

(1/99)