

What Eviction Notice is the Landlord Required to Give You?

An “eviction” is a court process that removes a tenant from the residence. Before a landlord can file for eviction in court, they have to terminate the tenancy of the person living in the residence and give that person the time to move out voluntarily. Most of the time, in order to terminate the tenancy, the landlord has to give the tenant written notice.

These notices can have various names - “notice of termination of tenancy” or “notice of non-renewal,” or “notice to pay or quit,” among others. Generally speaking, if a tenant is given proper and timely notice of termination of tenancy or non-renewal of tenancy, then after the time period in the notice expires, the landlord can file a court action for eviction. What type of notice and how long of notice a tenant is entitled to depends on what type of lease or rental agreement they have.

All pre-filing notices in Wisconsin must¹:

- Be in writing. Text, email or other electronic writing is only acceptable if the lease specifically says so.
- State whether you can fix the problem and can stay (“right to cure”), or if you just have to leave.
- State the number of days you have to take action on number 2 - either fixing the problem or moving out, depending on the notice - before the landlord can move on to the next step of the eviction process.
- State whether there is money owed (should include the amount) and/or the lease rule(s) that the landlord believes you have broken.

Depending on your tenancy, the timeframe in the notice may be 5, 14, 28, or 30-days. So let’s talk quickly about different types of tenancies.

1. Many residential tenancies are term tenancies. This is when, whether your lease is written or simply a verbal agreement, you and your landlord have agreed on an end date to your tenancy.
2. If you and your landlord have not agreed to an end date to your tenancy and you pay rent regularly, you have a periodic tenancy. A common type of tenancy is a month-to-month tenancy. You have this kind of tenancy if you pay rent on a monthly basis AND you and your landlord have not agreed to an end date to your tenancy.
3. If you and your landlord have not agreed to an end date to your tenancy and you are not expected to pay rent on a regular basis, you are a tenant-at-will.

ATTACHMENT A

		TYPE OF LEASE/RENTAL AGREEMENT				
TYPE OF NOTICE	Notices Landlord to Tenant	WEEK-TO-WEEK (ORAL OR WRITTEN RENTAL AGREEMENT)	MONTH-TO-MONTH (ORAL OR WRITTEN RENTAL AGREEMENT)	YEAR-TO-YEAR (ORAL OR WRITTEN RENTAL AGREEMENT)	LEASE-ONE YEAR OR LESS (ORAL OR WRITTEN)	LEASE-MORE THAN ONE YEAR (MUST BE WRITTEN PER 704.03)
	FAILURE TO PAY RENT	5-DAY QUIT OR PAY NOTICE 704.17(1)(a)	5-DAY QUIT OR PAY NOTICE OR 14-DAY NOTICE (AUTOMATIC) 704.17(1)(a)	5-DAY QUIT OR PAY NOTICE 704.17(2)(a)	5-DAY QUIT OR PAY NOTICE 704.17(2)(a)	30-DAY QUIT OR PAY NOTICE 704.17(3)(a)
	FAILURE TO PAY RENT- 2ND NOTICE SERVED WITHIN ONE YEAR	N/A	N/A	14-DAY NOTICE (AUTOMATIC) 704.17(2)(a)	14-DAY NOTICE (AUTOMATIC) 704.17(2)(a)	N/A
	WASTE OR MATERIAL VIOLATION OF 704.07(3) BREACH OF LEASE OR RENTAL AGREEMENT	N/A	14-DAY NOTICE (AUTOMATIC) 704.17(1)(b)	5-DAY QUIT OR REMEDY NOTICE 704.17(2)(b)	5-DAY QUIT OR REMEDY NOTICE 704.17(2)(b)	30-DAY QUIT OR REMEDY NOTICE 704.17(3)(a)
	WASTE OR MATERIAL VIOLATION: BREACH OF LEASE-2ND NOTICE SERVED WITHIN 1 YEAR	N/A	N/A	14-DAY NOTICE (AUTOMATIC) 704.17(2)(b)	14-DAY NOTICE (AUTOMATIC) 704.17(2)(b)	N/A
	DRUG NUISANCE (MUST HAVE SPECIFIC NOTICE FROM LAW ENFORCEMENT AGENCY)	5-DAY NOTICE (AUTOMATIC) 704.17(1)(c)	5-DAY NOTICE (AUTOMATIC) 704.17(1)(c)	5-DAY NOTICE (AUTOMATIC) 704.17(2)(c)	5-DAY NOTICE (AUTOMATIC) 704.17(2)(c)	5-DAY NOTICE (AUTOMATIC) 704.17(3)(b)
	SAFE HOUSING NOTICE* (see requirements for use below)	5-DAY NOTICE (AUTOMATIC) 704.16(3)	5-DAY NOTICE (AUTOMATIC) 704.16(3)	5-DAY NOTICE (AUTOMATIC) 704.16(3)	5-DAY NOTICE (AUTOMATIC) 704.16(3)	5-DAY NOTICE (AUTOMATIC) 704.16(3)
	(NO REASON)	7-DAY NOTICE (AUTOMATIC) 704.19(3)	28-DAY NOTICE (AUTOMATIC) 704.19(3)	28-DAY NOTICE (AUTOMATIC) 704.19(1)(a)	Seek Advice	Seek Advice

*Requires imminent threat of harm to another tenant AND an injunction, condition of release, or criminal complaint naming the tenant to be removed.



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No matter your type of tenancy, there are three situations where the landlord is allowed to give a 5-day notice with NO right to cure:

1. If a law-enforcement agency gives the landlord written notice that you or your guests are manufacturing or distributing drugs or on or near the landlord's property or using the landlord's property as a meeting place for a criminal gang.
2. You pose a threat of immediate physical harm to another tenant or their child(ren) if you stayed, and the other tenant or their child(ren) has a restraining order against you or a criminal complaint has been filed against you for your actions against the tenant or their child(ren)².
3. If anyone in your household, including guests, engages in either:
 - a. Criminal actions that risks the health, safety, or right to peaceful enjoyment of other tenants or people nearby
OR
 - b. Drug-related criminal actions on or near the landlord's property³.

Note: if you decide to go to court and argue against the eviction from a 5-day notice with no right to cure, the burden of proof is not the same as it is in criminal court. In criminal court, the state must prove you committed a crime "beyond a reasonable doubt". Here, the landlord only must prove you committed the act by a "preponderance of the credible evidence". It is a confusing phrase, but the important thing to know is that it makes it easier for the landlord to prove you committed the crime.

How should I receive the termination notice from my landlord?

The landlord doesn't need to personally hand you the notice, but they, or someone who works for them, should try to give it to you or someone in your household who's over 14 and explain what it is. If they can't find anyone to leave it with, they should leave a copy of the notice somewhere it will easily be found at the rental property and mail you a copy. The landlord also has the option of mailing a copy of the notice by registered or certified mail⁴.

Because most notices are sent by certified mail, it is very important that you get any certified mail sent to you. It is never a defense that you did not pick up your certified mail or didn't know that you had certified mail.

What do I do if I receive a termination notice?

Do not ignore the notice. You have three options depending on the notice you receive:

1. Fix the problem and stay in the rental

This mostly applies if the landlord is required or chooses to give you a notice with a “right to cure”. This type of notice says that if you do what it asks within the given time, (ex: fix a violation or pay the full amount due) you can keep living there. After you fix the problem, write a letter to the landlord saying what you did and when. Keep a copy of this letter and any payments you may have made.

- a. If you pay in cash, the landlord has to give you a receipt⁵. If they won't, bring a witness, note down what you paid and when, and file a complaint with the Department of Agriculture, Trade, and Consumer Protection.
- b. If you don't agree with the amount the landlord claims you owe but agree that you owe something, you should pay what you believe you owe within the time set.

Note: During this time period a landlord cannot kick you out, refuse your rent payments, or take you to court.

What if I get a notice without the option to fix the violation?

You can still try to fix the problem and negotiate with the landlord to allow you to stay in the rental property, but the landlord is under no obligation to make an agreement with you. Make sure to document all of your attempts to fix the issue and if you come to any agreement with the landlord make sure to get it in writing!

2. Contest the termination and stay in the rental

If you are in the middle of your tenancy period, and you think the landlord has no

legal reason to terminate your tenancy, you can choose to stay put. The landlord will have to take you to court (called an “eviction”) and prove you broke the lease and that they gave you the correct notices. If the judge agrees with you and finds that the landlord did not give you the proper notice in the proper way, the eviction might be dismissed. This gets noted down in public records. Winning might not always help, because a future landlord could turn down your rental application just because you were involved in a lawsuit with your old landlord. But, you can truthfully say you were not “evicted.”

WARNING: there are also risks for staying in the rental. If the landlord wins, there might be a judgment of eviction against you and the court could decide that you owe at least double the prorated (daily) rent for each day you remained on the rental property after the notice expired.

3. Move out within the time frame stated in the eviction notice

Moving out means that you and any personal belongings you want are out of the unit. If you do not want an eviction case on your record, this is a good option. If you decide to move out, give your landlord a notice in writing of your move out date (and keep a copy for yourself) and be sure to return the keys, because the landlord has an obligation to try to re-rent the unit once they know you are out. An “eviction” is the legal action to get you and your things out of the unit. If you are gone voluntarily, and your landlord knows it, they should not file an “eviction.” If they do, you should tell the judge that you have moved out and that the landlord knows it.

Note: even if you move out, you will still be responsible for rent until a new tenant moves into your apartment or your lease ends. While moving out might help keep an eviction off of your record (which is important!), the landlord may still take you to small claims court for money if your security deposit does not cover all that you owe them.

Illegal eviction rules in leases:

Sometimes, landlords try to include termination rules in the lease that aren't allowed by Wisconsin state law. Even if they are written in the lease you signed, they are not valid.

For example:

- A landlord cannot evict you because you called the police or emergency services, and any lease that says they can is illegal.
- A landlord cannot evict you based purely on the fact that a crime occurred on the rental property that you could not have reasonably prevented, or if you or someone who lawfully lives with you is the victim of that crime, and any lease that says they can is illegal.
- A landlord cannot evict you for solely being the victim of a crime of domestic violence related to the rental property, and any lease that says they can is illegal.
- A landlord cannot evict you without using the court process, and any lease that says they can is illegal.

Note: that illegal lease provisions are violations of the Fair Trade Practices Act, and could entitle the tenant to sue the landlord for money damages.

What if I think the termination notice lists the wrong amount of rent or late fees owed?

According to the law in Wisconsin, the notice is still valid even with the wrong amount listed unless:

- The landlord intentionally wrote the wrong amount.⁹
- You paid the amount you believe you owe.¹⁰

It can be very helpful to immediately ask for a copy of the “ledger” from the landlord which shows a history of your debits and payments to them. This ledger should show how they arrived at the amount they say you owe. You should carefully check the ledger for any internal inconsistencies or mismatches with your own records.

It can also be helpful to review the lease agreement to make sure you understand the rules about rent, fees, and other financial requirements.

If after all of this you pay the amount you believe is correct and you go to court, you and the landlord will have the chance to provide proof as to why your amount is the correct amount. If the court official believes you have paid everything you owed, the case will be dismissed. If the court official believes the landlord listed the correct amount in the notice, the eviction case will proceed. If the court official believes you are both wrong about the amount, the case may be dismissed, but the landlord can give you a new eviction notice with the correct amount owed on it.

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[Procedure Eviction Housing](#)

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