



Kenosha Landlord Association

A Local Chapter of the Wisconsin Apartment Association

Volume 24, Issue 10

December 2012

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**This Year KLA Will
Have a December
2012 meeting.**

A Merry Christmas

DISCLAIMER: The Kenosha Landlord Association publishes this newsletter to create awareness of issues relating to the rental housing industry. Information is compiled from a variety of sources and the views and concerns expressed by the contributors do not necessarily reflect those of the editor or the Association. When necessary, we suggest you consult an attorney.

Normal Wear and Tear

by Robert L. Cain, Copyright 2012, Cain Publications, Inc.

Here are three excellent comments and tips from last week's Tip of the Week,

"What to Do About Tenant Damages."

I have the tenant sign an appendix to the lease. It outlines the charges for cleaning and damages. This way if they decide not to clean they know what the charges will be.

Paul Lammermeier

Just want to mention that it's always a good idea to keep all communication with the tenant in writing. When your property is damaged and the tenant agrees in writing to a payment schedule and then defaults on his or her promise, there is no way the tenant can show up in Court and say "It wasn't me, I didn't do it. It was like that when I moved in."

By agreeing to a payment schedule they have acknowledged responsibility for the act and cannot deny the existence of the damage.

If they do, the Judge will surely have follow-up questions of his/her own. Though I agree that tenants should be held responsible for their actions, I would be very careful with encouraging a tenant to do his/her own wall painting. What was a few crayon paintings on the wall will grow into a problem with the carpeting having to be replaced because the tenant did not have the common sense to cover the carpet before painting, or toppled the paint bucket in the process. Of course this same tenant will express to you that it was your fault, after all, you should have known better and they were working at your insistence.

Brooks

There is a law in Texas I didn't know about that might work with some tenants, especially ones with a desire to eventually become a homeowner. If you have to evict and they don't show up or pay back rent, then after the J.P. rules in your favor, you can file with the county the list their name with the state, which prevents them from buying or selling real property for ten years unless they pay you for all

legal expenses as well as any rent owed to you! Of course this will not affect those who don't care about their credit history.

Monty Peck

Editor's note: That, of course, is a judgment and landlords can get one in any state. Check your own state law to see how to get it recorded so it appears on the bad tenant's credit report. As Monty points out, they stay on a credit report for 10 years and earn interest. They can also be renewed.

An extra point, while the judgment is there, the tenant cannot buy ANYTHING on credit until the judgment is paid, not even a cell phone.

Thanks to Paul, Brooks and Monty. Great comments. Now to this week's tip. We run this tip a couple of times a year because tenant damages are a continuing issue facing rental owners and managers.

Last week we discussed what to do about tenant damages. Somewhere, probably in the nightly meetings of bad tenants, where they get lessons on how to live for free and trash rental properties, they learned the catch phrase "normal wear and tear." Thus, when you complain about, repair and bill them for the damage they did, like a broken record the rationalization and alibi "normal wear and tear" will come out of their mouths. If you don't know what normal wear and tear really is, sometimes you can actually get sucked into their version of the truth.

That's why this week's Tip of the Week is an explanation of what normal wear and tear really is.

A hole in a plaster wall, a broken window, crayon marks on the ceiling, cabinet doors torn off their hinges--those are obviously above and beyond normal wear and tear. But how about a worn place in the carpet, what about tiles on the kitchen floor cracked or missing? That is where the tenant can claim that he doesn't owe a dime of the security deposit, because that was just normal wear and tear and you can't charge him for that.

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ACT 143: LANDLORD OMNIBUS LAW

December 19th, 2012 Meeting Outline

Drafted by: Tristan R. Pettit, Esq., Petrie & Stocking S.C.

A. OVERVIEW

- Landlord Omnibus Law (Act 143)
- Legislation was rushed- a little over 1 month from beginning to end
- Assembly Bill- Senate Bill- Senate Amendment- Senate Amendment
- Problems with it- confusion, internal inconsistencies
- Corrective legislation needed

B. MORATORIUM ON EVICTIONS

- §66.1010, Wis. Stats.
- No municipality can enact or enforce ordinance that imposes moratorium on landlords regarding the filing of an eviction lawsuit
- Unknown why this was needed.
- Applies to both residential and commercial.

C. SEVERABILITY OF RENTAL AGREEMENT PROVISIONS

- § 704.02, Wis. Stats.
- Provisions are severable . . . unless it is one of the "8 Deadly Sins."
- Severable as long as the invalidity of a provision doesn't affect other provisions that can be given effect.
- Landlords should add a severability clause to all rental agreements.
- Applies to both residential and commercial rental agreements.

D. RESIDENTIAL RENTAL AGREEMENT THAT CONTAINS CERTAIN PROVISIONS IS VOID

- §704.44, Wis. Stats.
- Applies to residential rental agreements only.
- New law took the "7 Deadly Sins" from ATCP 134.08 and added them to ch. 704 and then added a new deadly sin.
- If any of the "8 Deadly Sins" are included in a residential rental agreement the agreement will "void and unenforceable"
- Baeirl v. McTaggart holding- If residential rental agreement included atty. fees provision then agreement is unenforceable against tenant- not void. Only applied to deadly sin #3 (atty. fees) didn't say inclusion of other deadly sins would make lease unenforceable, although that was assumed.
- Deadly Sin #8- cannot include language that allows landlord to terminate tenancy of tenant if crime is committed in or on rental

property, if tenant could not have reasonably prevented it.

- Invalidates most Crime Free Lease Addenda as currently written- most modify if want to continue to use.
- Tenant advocates argue that Deadly Sin #8 means that landlord can't evict tenant if tenant couldn't have prevented the crime from occurring by family member or guest. That is NOT what the law says.
- New legislation in the works will remove the tDeadly Sin if passed and allow landlords to evict tenant if certain crimes are committed even if they have a lease and 151 offense- "1 Strike Rule."

E. DISPOSITION OF PERSONALTY LEFT BY TENANT

- §704.05(5), Wis. Stats.
- Allows landlord to immediately dispose of tenant's abandoned property if certain language is included in rental agreement (and renewal agreements) that landlord will not store tenant's abandoned property.
- Can dispose "in any manner that landlord, in its sole discretion, determines in appropriate."
- Exceptions:

1. Must hold medical equipment or prescriptions for 7 days.
 2. If abandoned property is a titled vehicles or manufactured homes than landlord must give tenant or other lien holders written notice of intent to dispose.
- Landlords should add this language to all rental agreements and renewal agreements going forward.
 - If landlord doesn't include such language in rental agreement, then the old law regarding disposal of abandoned property applies (i.e. hold for 30 days after sending written notice).
 - Doesn't apply to self-service storage facilities §704.90
 - Applies to both residential

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ACT 143: LANDLORD OMNIBUS LAW

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and commercial contexts.

-New law is not a streamlined evictions process-it doesn't allow a landlord to evict a tenant by disposing of tenant's property if tenant is still in the rental unit.

F. CODE VIOLATIONS

- §704.07(2)(bm), Wis. Stats.
- Similar to ATCP 134.04(2)(a) -but less clear.
- ATCP required landlord to disclose code violations only if landlord had received notice from code enforcement of the violation-very objective.
- New law requires disclosure of violation to tenant if 4 elements exist:

1. Landlord has actual knowledge of violation-very subjective!
2. Affects the dwelling unit.
3. Presents significant threat to tenant's health or safety.
4. Not been corrected.

- ATCP requires disclosure of items in 134.04(2)(b) (the "really bad stuff") if landlord "knew or could have known based on reasonable inspection."

-New law only requires disclosure if landlord "knows."

- Applies to both residential and commercial landlords.

G. INFORMATION CHECK-IN SHEET

- §704.08, Wis. Stats.
- Landlord must provide a "standardized information check in sheet" to tenant.
- Must contain an itemized description of condition of premises at time of check in -Landlord completes????
- Tenant has 7 days to complete check in sheet and return to landlord- Tenant completes????
- Not required to be given at renewal.
- Question: Who is required to complete it?
- Applies to residential tenancies only.
- Will be clarified by corrective legislation.

H. DAMAGES FOR FAILURE OF TENANT TO VACATE

- - §704.27, Wis. Stats.
- Addresses the issue of "holdover damages."
- Landlord "shall" recover at minimum twice the rental value apportioned on daily basis for period after tenancy terminated until tenant actually vacates.

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- Prior law said that court "may" award holdover damages.
- Applies to both residential and commercial contexts.

I. WITHHOLDING FROM AND RETURN OF SECURITY DEPOSITS

- §704.28, Wis. Stats.
- Essentially takes language in ATCP 134.06(3) and codifies it by adding to Ch. 704.
- Landlord can withhold from security deposit for:
 1. Damage, waste, neglect.
 2. Unpaid rent.
 3. Utilities provided by landlord and not included in rent.
 4. Direct utility services provided by government.
 5. Unpaid municipal permit fees if landlord becomes liable for them due to tenant's non-payment.
 6. Items in landlord's Nonstandard Rental Provisions document.

-Language in new law is different than the language in ATCP 134.06(3). Why??

-Still cannot deduct for "normal wear & tear."

- Timing for return of security deposit:

1. If tenant vacates prior to end of lease then 21 days from date when lease terminates or when new tenancy starts if re-rented.
2. But why not same extension of 21 days when tenant is evicted???

- Applies to both commercial and residential contexts.
- Will be corrective legislation.

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ACT 143: LANDLORD OMNIBUS LAW

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J. PRACTICES REGULATED BY DATCP

- §704.95, Wis. Stats.
- Act 143 took some unauthorized trade practices (UTP) and included them in ch. 704—namely sec. deposit withholding issues.
- Practices in violation of this chapter [704] may also constitute unfair methods of competition or UTP under §100.20, Wis. Stats.—which allows tenant to sue for double damages and attorney's fees—private Attorney General statute.
- Can a landlord now be sued for double damages and atty. fees for any violation of ch. 704 or just for violations of ch. 704 that are also included in ATCP?
- New law uses the word "may"—does this mean a court can decide that a violation of ATCP section that also is contained in ch. 704 may not be an UTP?
- Pro-Landlord Analysis: §100.20(5) only applies to violations of ATCP rules and not to violation of statutes. For a private cause of action to exist under §100.20(5) there has to be a violation "of an order issued under this section" and statutes are not "orders" and "section" refers to s. 100.20 dealing with marketing end trade practices not a section of general L-T law.
- Pro-Tenant Analysis: Tenant can sue landlord for any violation of ch. 704 now and seek double damages and attorney's fees.
- Applies to both commercial and residential contexts.

K. ACCEPTANCE OF RENT

- §799.40, Wis. Stats.
- If landlord commences an eviction action after tenant's tenancy is

terminated for failure to pay rent, the eviction action can't be dismissed solely b/c landlord accepts past due rent from tenant.

- Unknown Answers: What if tenancy terminated for something other than failure to pay rent? What if tenancy terminated for failure to pay rent and an additional breach? What if landlord accepts the money after tenancy is terminated but before the eviction lawsuit is filed?

- Milwaukee County- New law does not apply if landlord accepts the rent but doesn't tell the tenant that eviction action will continue.

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Should an Eviction Always Disqualify an Applicant



by Robert L. Cain, Copyright 2012, Cain Publications, Inc.

Some landlords answer with an emphatic "YES!" There is no way you should ever rent to a tenant who has been evicted. And those landlords have a legitimate case and point.

However, if you rent to low-income or marginal tenants, you may run into applicants who have been evicted. It's just a fact of life. Low-income and marginal tenants have a higher incidence of evictions than do renters who earn \$100,000 a year.

There can be numerous reasons for those evictions, some that will absolutely disqualify them from renting from you, and some that just mean they had some hard luck and probably will not be evicted again. In a slow rental market (one where it's hard to find tenants), you might want to consider renting to applicants who have been evicted. If you make it clear that an eviction will not absolutely disqualify them from renting from you, you may find out that they were in a situation that simply made it impossible to pay the rent or that


they had a roommate or spouse who created the problem that precipitated the eviction.

Ask on the screening form or rental application for the reason for a past eviction and you may get an explanation that will satisfy you that you will not have to evict them. Of course, you will verify the information they give you.

Be extremely careful, though. You need to satisfy yourself that the applicant is telling you the truth without embellishment and without forgetting to tell you part of the story. Sometimes people really do learn lessons. Other times they haven't changed a bit, but have gotten really good at telling sob stories to make a landlord's heart bleed. What follows are some **possibly** legitimate reasons why a tenant would not have been able to pay his or her rent and was evicted.

You decide how much credence to give them. Bad tenants

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January 16th, 2013

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Normal Wear and Tear

Continued from page 2

What follows is a list of common things you will find around the house that a tenant might have some affect on and a range of life expectancy. For vinyl and wall-to-wall carpets you should get a pretty good idea of the life expectancy when you buy it, but for other items you may not.

A rule of thumb to follow, whenever there is a question about who should pay for damage, is that the landlord should pay. In this article, however, I will attempt to remove some of the question and possibly enable you to get a better idea of when you should deduct money from the security or cleaning deposits.

The first step in determining wear and tear is good record keeping. You need records, as complete as possible, of when you purchased items and/or when you installed them. If you don't have a starting point, you certainly will have no way of knowing with any accuracy how long they should be expected to last.

If the fixtures or appliances were in place when you bought the property, try to find out from the seller their history. Many times the previous owner will have all the warranty and product information, including manuals.

The other vitally important thing to have is the tenant move-in checklist, signed by the tenant. Without that, the tenant can claim, often successfully, that whatever the damage was, it was there when he or she moved in.

In addition to that, some damage is the fault of the landlord for not checking the property regularly. As you well know, you cannot expect a tenant to take care of a property the way the owner does. Tenants just don't notice things that can do major damage to a building.

For example, few tenants would think anything about earth to wood contact. They will shove dirt up against the side of a house and not even notice when the wood on the side of the house starts to rot. That is the fault of the landlord. A tenant will probably not notice a bad roof until it leaks, despite the fact that it shows all the signs of being on its last legs.

There is simply no way you could collect damages from a tenant for dry rot due to earth-to-wood contact: you should have seen it.

Once you have noticed that a tenant is piling dirt against a building, though, it is up to you to tell him not to do it anymore. Once you do, and you have left a paper trail proving that you have, then the tenant would have some responsibility. Even so, it is up to the landlord to take care of his investments.

When a tenant moves in, make it clear to him or her that you want to be notified of damage and that you don't want things let go.

How tenants damage things

Dishwashers--they use the dial to run them through their cy-

cle. This will strip the timing mechanism. Dishwashers should be allowed to run through their cycles fully, not set to rinse again or dry again. Since a dishwasher should last between five and twelve years, if the control knob breaks before that, it is above and beyond ordinary wear and tear.

Water heaters--do not wrap them in an insulating blanket, no matter what the environmentalists claim. Doing so voids their warranties and the Underwriter's Laboratory certification. The insulating blanket makes them too hot and can overheat the wiring. If a tenant wraps a water heater, thinking they are saving energy, and the water heater goes out, that is beyond ordinary wear and tear. Tenants will sometimes drain an electric water heater without turning the electricity off. That will burn out the elements.

Water heaters last from eight to twelve years. Burnt out wiring or elements are beyond ordinary wear and tear.

Ranges--gas ranges will last indefinitely. About the only thing a tenant can do to damage one is break a knob, and it happens. But accidents happen, and it is probably ordinary wear and tear.

Electric ranges, on the other hand, do not last as long, about 15-20 years. Tenants will remove elements to clean and not put them back in properly, shorting out either the element or the entire wiring on the stove.

Furnaces--It is important to change the furnace filter once a month. Leave a dirty filter in and risk ruining the fan motor. If necessary, get the tenant a supply of filters with the instruction to change it the first of every month, whether he thinks it needs it or not.

Storm doors--tenants remove the wind spring and the door flies open, breaking the glass,

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Should an Eviction Always Disqualify an Applicant

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always have an excuse, it is our job to decide if the excuse is legitimate.

Loss of job, layoff

Rent increases Loss of housing subsidy (look at this one carefully, people don't lose them for no reason)

Loss of other income subsidy, such as child support

Medical, transportation or other crisis

High winter utility bills (then they would have to satisfy you that that would not be a problem now)

Money stolen

Budgeting difficulties (how have they improved now?)

Loss of social service support

Substance addiction

Domestic violence (has the situation that caused it changed?)

Loss of roommate

Poor communication with landlord, case manager, etc.

Here are some reasons for eviction that would make you *never, ever* want to rent to an applicant:

Damage to unit

Violent crimes

Drug dealing

Prostitution

Child molestation

Domestic violence

Disturbance of neighbors

Drug addicts not in a rehab program

Keeping a filthy unit

Gang members

Left children unsupervised

A rule of thumb is that you want a satisfactory landlord reference between their eviction and their renting from you to show with actual, concrete evidence, rather than just their word for it, that they just may know how to and be ready to be good tenants.

Some of the questions to ask previous landlords are:

1. Did you ever have to remind this tenant to pay the rent on time?

2. Did you receive complaints about this tenant's behavior from other tenants or neighbors?

3. Did this tenant ever "disappear" for any length of time and have the rent paid by someone else with no explanation?

4. What kind of car does this tenant drive?

5. Did this tenant ever lie to you?

There may be others you can think of, but simply asking for dates of tenancy and if the rent was ever late may not be enough to make a profit-



able decision.

Even so, if you rent to one of this class of tenant, you may want to pay close attention to their behaviors and promptness with rent payments. After all, a little extra management could save a bundle in the future.

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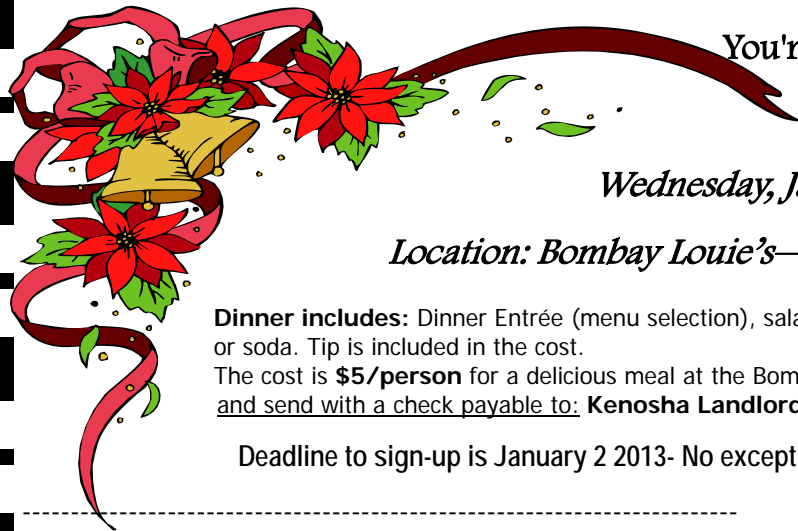


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6:30 pm food, Meeting at 8 pm.



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2012-2013 Holiday Party

Wednesday, January 16, 2012 at 7:00pm

Location: Bombay Louie's—2227 60th St., Kenosha, WI

Dinner includes: Dinner Entrée (menu selection), salad, bread basket, dessert, and choice of coffee, hot tea or soda. Tip is included in the cost.

The cost is **\$5/person** for a delicious meal at the Bombay Louie's Restaurant. Please complete the form below and send with a check payable to: Kenosha Landlord Association P.O. Box 1505 Kenosha, WI 53141

Deadline to sign-up is January 2 2013- No exceptions! Cocktails at 6:30 pm

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Kenosha Landlord Association ~ 2012~2013 Annual Holiday Party

Wednesday, January 16, 2013 at 7:00pm

Location: Bombay Louie's

Normal Wear and Tear

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springing the hinges, or whatever. With no mistreatment, storm doors will last until they are too ugly to leave up. If a tenant breaks one, it is above and beyond ordinary wear and tear.

Driveways--Concrete is damaged by something known as "point loading." That happens when a heavy vehicle is parked on the same spot for a long period of time or over and over. Eventually that weakens the concrete in that spot and it cracks. The cracks radiate out from the spot of the point load. If your tenant has a heavy vehicle,, ask that he park it in different places on the driveway. Point load damage could be considered above and beyond ordinary wear and tear.

Cabinets--most tenants will not pick up a screwdriver and tighten a screw that is coming loose. Many don't know what a screwdriver is. Then, when the door comes loose from one hinge, they will let it hang from the other one. Cabinets should last for 20 to 30 years. If they are damaged from tenant neglect such as that, it is above and beyond ordinary wear and tear. It doesn't cost a tenant anything to tighten a screw. At the same time, though, a periodic inspection would probably have discovered a loose cabinet door.

Floors, hardwood, tile, vinyl--You know what the life expectancy is when you buy the flooring, and it varies by quality. If you buy cheap vinyl, and a tenant's high heel pokes a hole in it, you got what you paid for. But if a tenant drags something sharp across the floor and scratches or cuts the flooring, that is above and beyond ordinary wear and tear.

Doors (hinged)--tenants have been compared to teenagers: if something doesn't work the first time, force it. Things get caught in doors, such as broom handles on the hinge side of the door, and then the door gets sprung. Screw holes are stripped and hinges get bent. Doors last indefinitely, if used properly. Damage to them is above and beyond ordinary wear and tear.

Doors (sliding)--These come off their tracks, and despite the fact that it is easy and costs nothing, tenants don't put them back on their tracks. Then they come loose and get banged around, damaging the tracks so they have to be replaced. Take the cost of damage out of the security deposit.

You can't be there all the time to watch to see that a tenant doesn't do anything stupid or destructive. Previous landlords can often give you some insight on how well a tenant took care of a property. Some tenants are simply unconscious: they don't mean to do any harm, they just have no way to connect what they have done with the damage. One of the mysteries of life.

Deciding whether damage is beyond ordinary wear and tear often boils down to a landlord basic, deciding if something was used in a way it wasn't designed for. If it wasn't, it is damage which should be paid by the tenant.

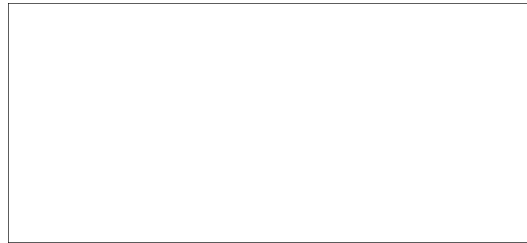
Thanks to Don Crawford of Crawford Home Inspection Service for much of the information contained in this article.

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Kenosha Landlord Association
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VFW

6618-39th Ave

On our regular
3rd Wednesday the month

December 19, 2012

6:30 P.M. for food

7:00 P.M. for meeting

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VFW

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