

DRAFT Summary of LRB 2582/1

the so-called “Rental Housing Affordability Act”

as circulated on December 5th, 2018 (sponsors due noon Friday, 12/8)

by Representative Robert Brooks & Senator Frank Lasee

CHANGES DIRECTLY AFFECTING TENANTS

1. Landlord cost of repairs: Landlords who make repairs will be allowed to charge for their time at a “reasonable hourly rate” for purchasing or providing materials, supervising their staff and time spent hiring a 3rd-party contractor. (Sections 34-35, Pages 18-19)

REAL TALK: Landlords want to get paid to go shopping for supplies and “supervising” staff working on the repairs. Effectively making it so they can pass on their costs of doing business to tenants, how does that make rentals more affordable?

2. Rent Abatement: Both the state rent abatement law in Wis. Stat. 704 and it is clarified that local laws can only allow rent abatement if the conditions “materially affect” the health or safety of the tenant or substantially affects the use and occupancy of the premises. (Sections 36-37, Page 19)

REAL TALK: I’m not sure what they’re trying to do here, I don’t think it will have any real life implications.

3. Credit and Background Checks: (Section 38, Page 20)

a. Removes double damages for violations of credit report violations. They lifted language from DATCP 134 which is a consumer protection regulation and put it into Wis. Stat. 704 which removed the provision that the tenant can get double damages, court costs and reasonable attorney fees for violations of the laws.

REAL TALK: The state legislature has slowly been shifting consumer protections out of the authority of the Department of Agriculture, Trade and Consumer Protection and removing the double damages, court costs and attorney’s fees.

b. Raises the amount a landlord can charge for a credit check fee. The landlord can only charge for the actual amount that they are charged for a credit check fee. They are raising the maximum amount from \$20 to \$25.

REAL TALK: Credit checks don’t typically cost more than \$20 but landlords routinely collect the fee hoping tenants don’t know they can get their money back, this will increase their profit.

c. Allows charges for background checks beyond just credit. If a prospective tenant is currently living out of state, they can also charge \$25 for a background check, in addition to the credit check fee. The tenant must be notified of the charge before it is done and they must get a report. However, they can continue to be charged by other prospective landlords even if they have a recent report.

REAL TALK: “background check” likely means a criminal background check. Landlords already use CCAP for Wisconsin residents.

4. Email and text communications, electronic transfers: If the landlord puts a provision in the lease, they would be allowed to communicate by email or text or do an electronic transfer for any of the following: (Section 39, Pages 20-21)

- a. Copies of the rental agreement
- b. Documents related to the rental agreement
- c. Security deposit return
- d. Documents relating to the accounting and disposition of the security deposit
- e. Promises to clean, repair or improve the premises prior to entering into the rental agreement
- f. Notice to enter repairs or showing the unit

REAL TALK: This is just bringing us into the modern age as long as it is done correctly.

5. Eviction notices for non-payment of rent (Sections 40-42, Page 21)

- a. Would include “late fees”
- b. If there is an error and the notice includes an incorrect amount due, the notice is valid unless the tenant has paid the amount the tenant admits is actually due.

REAL TALK: This is so the landlord can get a judgment more easily at court without getting tossed out on a technicality.

6. Summons and Complaints don’t need to be notarized. This change would prohibit the courts from requiring the summons and complaint to be notarized. (Section 44-45, Page 22)

REAL TALK: I wonder which county is doing that? And why?

7. Requires “valid legal grounds” to get a full hearing in front of a judge at Small Claims Court. The language before said that a party could contest and that was all that was needed for a hearing, now the court could deny a hearing based on a preliminary determination that there is not a “valid” legal claim. (Section 46, Page 22)

REAL TALK: Well, this could gum up the works if the court commissioners or judges have to hear enough to determine if there should be a hearing, that could really slow things down. Unrepresented tenants will face an uphill challenge, as they may now be asked to say the “magic legal words” that gets their case heard.

8. If the landlord serves the 5, 14, 30 or 28 day notice (or other periodic tenancy termination) by certified mail, it's proof that the notice has been properly served and the landlord can't be required to provide an affidavit of service. (Section 47, Page 22)

REAL TALK: Most courts already recognize that certified mail service for these notices are sufficient and trying to read this sentence will break your brain.

9. Eliminates estoppel as a defense to an action of eviction or claim for damages. If the landlord has been accepting your rent on the 3rd of the month for 5 years, even though the lease says it's due on the first, they can suddenly give you an eviction notice for not paying on the first and the fact that you always paid on the 3rd is no longer a defense. (Section 48, Page 22)

REAL TALK: The landlord can pick and choose when they decide to follow their common practices or the strict enforcement of the lease.

10. If a tenant qualifies for emergency assistance, they will only get a stay of an eviction for 5 days and only if they apply prior to the writ being issued. Since writs are supposed to be issued immediately, this severely limits the ability to get a stay. (Section 49, Page 23)

REAL TALK: This applies to a specific type of grant Tenants won't be able to wait until after a hearing to apply for assistance.

11. Service Animals: (Sections 25–28, Pages 13–17).

- a. Defines Emotional Support Animals (ESAs),** not currently defined in Wisconsin law, as giving "emotional support, well-being, comfort, or companionship" to a person with a disability. Defines licensed health professional, and requires their license to be in "this" state.
- b. Prohibits discrimination/denial of housing** if a person with a disability has an animal that is "individually trained to do work or perform tasks for the individual," but allows the landlord to require that the disabled person give "reliable documentation of the disability-related need for the animal."
- c. Allows landlords to deny housing to some tenants.** Tenants would be denied if they have an animal and: are not disabled (as certified by a Wisconsin licensed health professional), do not have a disability-related need for the animal, or fail to provide the documentation requested regarding "disability-related need for the animal."
- d. Allows landlords to charge for service animal and ESA damage** and "liability for sanitation."
- e. Allows landlords to deny some service animals and ESAs** if: "the animal would impose an undue financial and administrative burden," the animal "poses a direct threat to a person's health or safety," or if the animal "would cause substantial physical damage to a person's property."
- f. Requires a fine of not less than \$500** to be charged to licensed health professionals or individuals who misrepresent the individual's disability or need for an ESA.
- g. Repeals current service animal legislation for individuals with vision, hearing or mobility impairments.**

REAL TALK: The Americans with Disabilities Act (ADA) regulates service animals. If any of this conflicts with the ADA rules, the ADA wins.

12. Building Inspections

a. Local Programed or Regularly Scheduled Inspections: Prohibits local ordinances that allowed regularly scheduled building inspection programs. (Section 8, Page 8)

REAL TALK: Landlords only want to be inspected if there is a complaint by a tenant that they can then retaliate against. They are banking on tenants being desperate for housing and not filing complaints.

b. Fees: Can only be for the actual and direct costs of the inspection. Not the other costs the city, county or village incurs. (Section 9, Page 9)

REAL TALK: They can say less fees for the landlords make housing more affordable, but do you honestly think that cost savings will be passed along to the tenant? What happens when cities can't afford to provide building inspection services, then they tax more or cut services.

c. Recordkeeping: If there are complaint driven inspections from inspectors, city employees or elected officials, local governments must keep a record of the name of the person filing the complaint, the nature of the complaint and any inspection conducted based on the complaint (Section 12, Page 9)

REAL TALK: This seems designed to intimidate elected officials so they don't make complaints, or collect the names of city employees so that landlord-supported elected officials know who might need to be "re-assigned."

d. Interior inspections: Local governments cannot pass laws that regulate the "aesthetic considerations" that do not relate to health or safety, including color, texture or design considerations. (Section 23, Page 13)

REAL TALK: Building inspectors generally don't do this. – so I'm not sure it has any practical impact?

13. CCAP records: Currently, if a small claims case (such as eviction) is dismissed, that record can be taken off CCAP within 2 years. This would require records for civil cases to remain on CCAP for 10 years unless the court officially decides that the case is closed, confidential, or sealed. (Section 43, Page 21)

REAL TALK: If a tenant's eviction dismissals stay on CCAP for 10 years, it will cause many qualified tenants to be unnecessarily denied housing.

14. Landlord Residential Registration programs: Two years ago 2015 Wis Act 176 restricted the information a city was allowed to gather under their landlord registration programs. The city could only ask for the the name of the owner and for an authorized contact person's address and telephone number. This new law changes that to register the name of only one owner OR only one authorized contact person's name and address. Only Milwaukee can charge for registration, and only for the direct cost it takes to register them. (Section 7, Page 8) (Section 10 &13, Page 9-10, Section 13)

REAL TALK: Interested in knowing what international corporation, Hong Kong investor, or billionaire celebrity is the actual legal owner of your unit? Good luck!

16. Eliminates rental weatherization program. (Section 52, Page 24)

REAL TALK: They tried to eliminate this in the budget, they are cleaning up their mess.

17. Trespassing. Sets a deadline of July 1, 2018 for police departments to have written policies on investigation of complaints of trespassing and removing people from a dwelling. (Section 30, Page 17)

18. Initial applicability and effective dates. (Section 53-54, Page 25)

a. The laws will go into effect on the date based on when it is signed, except for 704.085 (credit and background checks), 704.10 (electronic delivery) and 704.17(1),(1g) &(4m) (rent includes late fees and errors don't make notice invalid) which will go into effect for new rental agreements signed after the effective date.

b. Rental weatherization program will be eliminated January 1, 2018.

REAL TALK: Expect landlords, tenants, lawyers and judges to make plenty of mistakes, as the only thing that creates more confusion than new laws are new laws that don't all apply at the same time.

OTHER

19. Repairs or replacement materials for Landmarks or properties in a Historic Districts or Neighborhood Conservation Districts: Counties, towns and cities must allow the owner to use materials that an ordinary observer viewing from the centerline of an adjacent highway would perceive as having a substantially similar appearance as the original material. (Sections 1-6, Pages 6-8)

REAL TALK: If you can't see how bad it looks driving by in your car it doesn't matter if pedestrians and neighbors live with it.

20. Limiting fees local governments can charge. Limits fees local government can charge for garbage collection, fire protection, snow plowing, street sweeping and storm water management along with limiting "fire protection" so that it cannot include fees or charges for production, storage, transmission sale or delivery of water for fire protection. It also limits fees or charges related local enforcing ordinances about noxious weeds, electronic waste or other building or property maintenance standards unless the person who is being fined or charged has been notified they may be charged by 1st class mail or email if it was provided. (Sections 14-17, Pages 10-11) Oh, and sewerage service charges too! (Section 21-22, Pages 12-13)

REAL TALK: None of these "cost savings" will be passed along to the tenant, instead they will be pocketed by the landlord and passed on to the taxpayer.

21. Public Utility changes if a tenant owes a municipal utility money for water or electricity, the utility should send the bill to the tenant. This also applies if the tenant moved away and the landlord gives the utility the tenant's forwarding address within 21 days after the tenant moved out. If a landlord asks for it, a public utility must give the landlord five days notice before disconnecting a tenant's electricity for non-payment. If the utility cuts off a tenant for non-payment, it can't require the landlord to show proof that the tenant doesn't live there anymore before turning the service on again.(Section 18 - 20, Pages 11-12) and (Section 31-33, Pages 17-18)

REAL TALK: Landlords want past due charges to go directly to the tenant. Also, it's nuts to think that a public utility would require an eviction to resume service, but here we are.

22. Requires lawyers who draft pleadings, motions or documents to include their name and state bar number on any such documents. (Section 50, Page 23)

REAL TALK: Lawyers often run for office, and the pleadings, motions and documents they prepare provide great out-of-context ammunition to be used against them in their campaigns. Yeah, we got nothing.