

How can I respond to landlord retaliation?

Tenants who believe they are being retaliated against should do the following:

- 1. Document what is going on.** Tenants should write a letter to the landlord that documents that the act is retaliatory and they know it. For example, "As you know, I asked you last week to stop entering without proper notice. Today you have given me a nonrenewal notice. You should be aware that your nonrenewal is retaliatory, which makes it invalid and illegal under Wis. Stat. 704.45 and ATCP 134.09(5). I intend to renew and expect you to rescind this notice and remove it from my file. I know my rights to file a complaint or sue for double damages."
- 2. If the landlord is threatening an eviction suit,** the tenant can write back explaining they know they cannot be evicted in retaliation for exercising their rights, and bring a copy of the letter and other evidence for the judge to see at the eviction trial. Attorneys are not required in small claims court or eviction cases, but tenants may want to contact a qualified Wisconsin housing attorney.
- 3. Contact an agency.** If the landlord does not quickly rescind the act in writing, send a copy of your letter to Consumer Protection or call them toll-free at (800) 422-7128. Tenants in cities like Madison should also forward their complaint to the building inspector, police department, and City Attorney. Agencies may warn the landlord to stop their threats or harassment, or even prosecute if the landlord has violated regulations before.
- 4. Gather evidence.** If the act(s) occurred after you called the inspector, police or other agency, make sure you get a copy of their report for your records. If the landlord sues to evict you, you can bring the report, letters from the landlord, your letter, any other evidence or witnesses, and copies of the laws and ask that the eviction be dismissed.
- 5. Bring it to a judge.** If the landlord's retaliation has cost you money, you can sue for any related damages. Violations of Consumer Protection laws require a mandatory double of related damages plus court costs and attorney fees. You cannot sue for aggravation or inconvenience. There must be a cash value directly related to the harm your landlord's retaliation caused you.

Suing for Landlord Retaliation

Language adopted in SB466 or 2011 Wis. Act 143 indicates that **any violation of Wis. Stats. 704 may be an unfair trade practice and therefore entitled to double damages, court costs and reasonable attorney fees.**

"704.95 Practices regulated by the department of agriculture, trade and consumer protection. Practices in violation of this chapter may also constitute unfair methods of competition or unfair trade practices under s. 100.20."

This is in addition to the double damages, court costs and reasonable attorney fees that were allowed under DATCP 134. This means that **any violation of tenant-landlord law by the landlord could be entitled to double damages, court costs and reasonable attorney fees.**

How do I make a formal complaint?

File with Consumer Protection. You can easily file a complaint with the Department of Agriculture, Trade and Consumer Protection. The bureau keeps complaint records and will contact the landlord about the violation.

Sue in small claims court. After the deadline in your letter expires and the landlord doesn't respond, you may sue your landlord in small claims court for double what was wrongfully withheld plus court costs and reasonable attorney fees (Wis. Stat. 100.20(5)) & 704.95).

Department of Agriculture, Trade and Consumer Protection

Phone: (800) 422-7128
Website: www.datcp.wi.gov

Small Claims Court

Look up your county's small claims court in the government pages in the phone book or by visiting the online directory:

www.wicourts.gov/contact/docs/clerks.pdf

Don't forget to follow Tenant Resource Center on our [Blog](#), [Facebook](#), and [Twitter](#) accounts for announcements about our annual fundraising events in Madison, and more!

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COMMUNITY SHARES OF WISCONSIN

Special thanks to the **Dane County Bar Association** and **Area Agency on Aging of Dane County (Leck Grant)** for their generous support in updating these materials!

The **Tenant Resource Center** is a non-profit, membership organization dedicated to promoting positive relations between rental housing consumers and providers throughout Wisconsin. By providing information and referrals, education about rental rights and responsibilities, and access to conflict resolution, we empower the community to obtain and maintain quality affordable housing.



TENANT RESOURCE CENTER

Landlord Retaliation

MAIN OFFICE

(Located in the Social Justice Center, Suite 102)

1202 Williamson Street, Madison, WI 53703

Monday – Friday, 9AM-6PM

Housing Questions: (608) 257-0006

Toll-Free: (877) 238-RENT (7368)

asktrc@tenantresourcecenter.org

En Español: (608) 237-8913

Hmoob: (608) 257-0143

Mediation: (608) 257-2799

Business: (608) 257-0143 | Fax: (608) 286-0804

CAMPUS OFFICE

(Located in the Student Activity Center, 3rd Floor)

333 East Campus Mall, Madison, WI 53703

Hours vary, please check the website!

Phone: (608) 561-3727

uw@tenantresourcecenter.org

HOUSING HELP DESK

(Located in the Dane County Job Center, Room 2)

1819 Aberg Avenue, Madison, WI 53704

Monday – Friday, 10AM-2PM

Phone: (608) 242-7406 | Fax: (608) 242-7490

hhd@tenantresourcecenter.org

Visit us at tenantresourcecenter.org!

Follow us on [B](#), [f](#) and [t](#)!

If you need an interpreter, materials in alternative formats, or other accommodations, call our administrative line at (608) 257-0143.

NOTE: 2011 Wisconsin Acts 108 and 143 (formerly SB 107 and SB 466) changed many laws. Act 108 (Dane County/Madison and Fitchburg) went into effect on 12/21/11 and Act 143 (statewide) went into effect on 3/31/12. These changes are indicated in **bold** and ~~strike through~~ and apply to leases signed **or** some events that happened after that date.

...A LANDLORD IN A RESIDENTIAL TENANCY MAY NOT INCREASE RENT, DECREASE SERVICES, BRING AN ACTION FOR POSSESSION OF THE PREMISES, REFUSE TO RENEW A LEASE OR THREATEN ANY OF THE FOREGOING, IF THERE IS A PREPONDERANCE OF EVIDENCE THAT THE ACTION OR INACTION WOULD NOT OCCUR BUT FOR THE LANDLORD'S RETALIATION AGAINST THE TENANT FOR ... MAKING A GOOD FAITH COMPLAINT ABOUT A DEFECT IN THE PREMISES ... COMPLAINING TO THE LANDLORD ABOUT A VIOLATION OF S. 704.07 OR A LOCAL HOUSING CODE ... EXERCISING A LEGAL RIGHT RELATING TO RESIDENTIAL TENANCIES.

- Wisconsin Statute 704.45,
"Retaliatory Conduct Prohibited"

Have you experienced retaliation for exercising your tenant rights?

State law protects tenants from landlords who would retaliate against tenants for trying to exercise their rights. The legislature, courts, and the Department of Agriculture, Trade and Consumer Protection have all created protections recognizing that tenant rights are meaningless if tenants will not use them for fear of landlord retaliation. If you believe your landlord has illegally retaliated against you, ask yourself the following three questions:

1. Can you show that you asserted, exercised or attempted to exercise a tenant right?

The first indication that an action may be illegal retaliation is that it follows a tenant exercising a legal right relating to residential tenancies. Tenants do not need to have finished exercising the right, they could just have asserted the right or attempted to use it. Tenant rights include:

- Demanding required or promised repairs
- Calling the building inspector
- Demanding the landlord follow laws about landlord entry
- Refusing landlord entry without proper notice
- Filing a complaint with Consumer Protection or filing a suit against the management
- Exercising your right to exclusive possession of the rental unit, such as by having guests (provided you are not in violation of the guest policy, if there is one)
- Refusing to allow the landlord to change substantial rules in the middle of the lease

- Demanding an end to discrimination, for example if a Black tenant demands an air conditioner since one was provided to all White tenants, but none to Black tenants. (For more information see our "Discrimination" brochure or contact Tenant Resource Center.)
- Demanding the landlord protect the tenant's right to peaceful enjoyment, for example by asking them to warn or evict a noisy neighbor
- Asserting or attempting to exercise any tenant right from a lease, statute, ordinance, administrative code or court decision, or enforcing many other rights not listed above

Even if the landlord and tenant both know that the tenant asserted a right, the problem may be documenting it. When tenants have a concern—about repairs, for example—they should never express it only verbally. Tenants should follow up in writing and keep a copy of the letter. Also, if tenants file a complaint with a building inspector, Consumer Protection or another agency, they should get a copy of the report for their records as soon as possible.

2. Did your landlord perform a retaliatory action?

Prohibited retaliatory acts under Wisconsin Statute 704.45 are:

- Increasing the rent
- Decreasing the services available to the tenant
- Filing an eviction action in court
- Refusing to renew the lease
- Threatening to do any of the above

Prohibited retaliatory acts under the Wisconsin Administrative code ATCP 134.09(5) and Madison General Ordinances 32.12(4) and 32.15 are:

- Terminating a tenancy
- Giving notice preventing the automatic renewal of a lease
- Constructively evicting a tenant by reducing heat, water or electricity

An additional retaliatory act prohibited ONLY in the City of Madison is reporting the tenant to law enforcement authorities as having unlawfully entered or immigrated into the United States in order to retaliate against the tenant for having exercised his or her rights as a tenant, regardless of the validity of such a report (MGO 32.12(4)). In Madison, citizenship status is a protected class.

3. Did the landlord do this because you asserted, exercised, or attempted to exercise your rights?

Each regulation has a different level of proof required for the act to be considered illegal.

Proof needed for retaliatory acts in violation of Wisconsin Statute 704.45

The tenant must only show that most of the evidence indicates the landlord would not have done the action "but for" the tenant's exercise of a tenant right. While the landlord could have other legitimate reasons for doing the eviction or act, the retaliation is still illegal if the landlord would not have retaliated except that the tenant exercised his or her rights.

Wis. Stat. 704.45 provides absolutely NO protection against eviction if tenants are behind in their rent (except if the unpaid rent is due to a retaliatory rent increase). The statute also provides NO protection for tenants' complaints about defects in the premises they caused themselves through negligence or improper use.

If tenants sue in Small Claims Court for violation of these codes, they can receive double any related financial loss (Wis. Stat. 704.95).

Proof needed for retaliatory acts in violation of Wisconsin Administrative Code ATCP 134.09(5)

The code also protects tenants who "asserted, or attempted to assert any right," whereas Wis. Stat. 704.45 seems only to protect tenants who actually exercise a right. Tenants can enforce this code by filing a complaint with Consumer Protection.

Proof needed for Dikhut v. Norton (1970)

Dikhut v. Norton is a court-decision that protects a tenant's right to use a "public policy" like the building code. The case can protect tenants asserting or attempting to use a public policy (unlike Wis. Stat. 704.45) and can protect tenants not covered by the Consumer Protection (ATCP) code. The case requires a strong level of proof; the assertion, use, or attempted use of public policy must be the only reason for the landlord's eviction or harassment.

Proof needed for retaliatory acts in violation of Madison General Ordinances 32.12(4) and 32.15

City of Madison residents have the same protections as in the Consumer Protection code, but the burden of proof is put on the landlord.

City police can issue fines from \$60 to \$600. If the matter goes to court, the tenants can cite MGO 32.15, which requires the court to "presume" the landlord is retaliating if the landlord's act occurred within six months after the tenant made a complaint to city authorities, such as Building Inspection or the City Attorney.