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Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on ... Housing
(AC-Ho)**

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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- Hearing Records ... bills and resolutions
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (Aug/2010)

Assembly

Record of Committee Proceedings

Committee on Housing

Assembly Bill 178

Relating to: return of security deposit to tenant and granting rule-making authority.
By Representatives Schneider, Albers, Sheridan, Musser, Staskunas, Vos, Pridemore and Toles; cosponsored by Senators Grothman and Lazich.

March 19, 2007 Referred to Committee on Housing.

May 3, 2007 **PUBLIC HEARING HELD**

Present: (7) Representatives Wieckert, Roth, Townsend,
 Honadel, Hebl, Young and A. Williams.

Absent: (0) None.

Appearances For

- Marlin Scheider , Wisconsin Rapids — Representative , 72nd Assembly District
- Orville Seymer , Milwaukee

Appearances Against

- Janet Jenkins , Madison — Wisconsin Department of Agriculture, Trade and Consumer Protection
- Bob Anderson , Madison — Legal Action of Wisconsin

Appearances for Information Only

- Ross Kinzler , Madison — Wisconsin Housing Alliance

Registrations For

- Glenn Grothman , Madison — Senator , 20th Senate District

Registrations Against

- None.

Registrations for Information Only

- None.

March 13, 2008 Failed to pass pursuant to Senate Joint Resolution 1.

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Scott Becher
Committee Clerk





State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

May 3, 2007

The Honorable Steve Wieckert, Chair
Committee on Housing

Re: AB 178 relating to the return of a security deposit to a tenant and promulgation of rules.

Dear Representative Wieckert:

Thank you for permitting the Department of Agriculture, Trade & Consumer Protection the opportunity to testify regarding AB 178. We oppose this bill as it extends the time for landlords to return security deposits from 21 days to 45 days. We also suggest that the portion of the legislation that requires DATCP to write rules is unnecessary because DATCP has already promulgated rules on precisely those subjects that are set forth in AB 178.

Under current ATCP 134, Wis. Admin. Code, a security deposit shall be returned to a tenant within 21 days of vacating the premises. This rule has been in place for approximately three decades. During that time we have heard very few concerns expressed that the 21-day return requirement is unreasonable or unmanageable. Indeed, thousands of landlords throughout the state have been complying with this requirement for tens of thousands of tenancies with few complaints or problems each and every year.

Security deposits are tenants' funds. They in no way belong to a landlord unless or until the end of a tenancy and a determination by the landlord that there is rent or other charges unpaid or that there is damage to the rental property. In a very real sense, security deposits are held in trust by landlords on behalf of tenants. Because of this fact landlords should have the amount of the tenant's security deposit available at the end of the lease. And, since many Wisconsin tenants are low income, they need their security deposits returned as soon as possible.

When a similar bill was introduced last session, those in favor contended that it was not feasible to obtain bids or estimates regarding how much repair of a damaged rental property would cost within 21 days. In response, those opposed to the bill pointed out that landlords do not need formal estimates or bids to determine how much to withhold

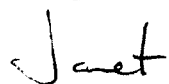
Agriculture generates \$51.5 billion for Wisconsin

from a tenant's security deposit. Rather, all that was needed was a good faith "guess" on the landlord's part. This good faith "guess" can easily be achieved within 21 days.

It is important to note that if a tenant doesn't pay rent on time, the landlord can evict a tenant in 5 days or 14 days depending on the circumstances. Moreover, if a tenant does not have a written lease or if a non-rent provision of a written lease is breached by the tenant, the landlord can evict in 28 days. We think it very unreasonable for a tenant to be able to be evicted 5 days after non-payment of rent and permit the landlord to retain the tenant's security deposit for 45 days.

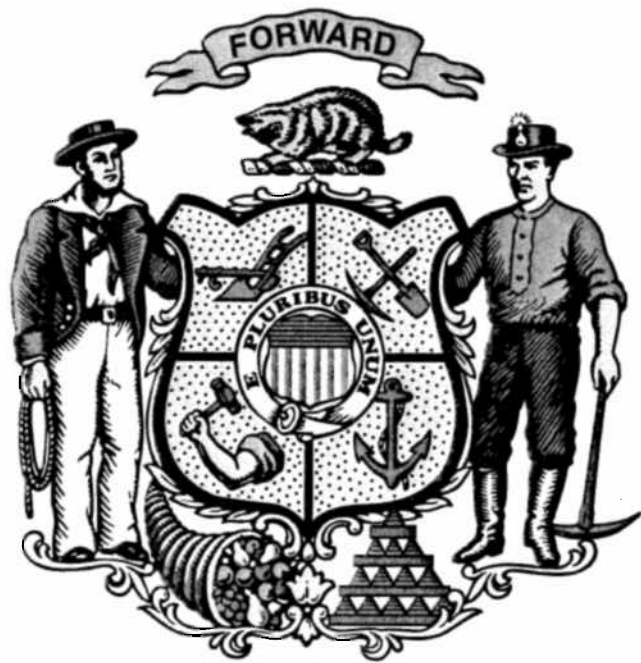
Finally, we wish to point out that the provisions of ATCP 134 were adopted only after multiple meetings with landlord groups and tenant's groups. As a result, the entire rule represents a compromise which should not be altered without agreement from all parties.

Respectfully,



Janet Jenkins
Administrator

Division of Trade & Consumer Protection



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TO: Assembly Committee on Housing

FROM: Bob Andersen *Bob Andersen*

RE: AB 178, relating to return of security deposit to tenant and granting rule-making authority

DATE: May 3, 2007

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Housing is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and family law). As a result, our organization has been extensively involved in housing issues over the years.

I was involved as a member of an ad hoc committee established by DATCP to draft the administrative rules which govern landlord tenant law under ATCP 134.

1. The Proposal Misunderstands What is Required by Current Law.

ATCP 134.06 (4) requires only that a landlord submit a written statement describing the reasons for withholding part or all of the security deposit within 21 days. It does not require that the landlord submit bills for work done by that time or that the charges to be made are the final charges that will occur. The only limitation on the statement of the landlord is that the landlord not *intentionally misrepresent or falsify* the statement that is made. ATCP 134.06 (4)(b). The statement that is required is merely an estimate. ***Consequently, all that is required to be given to the tenant within 21 days is an estimate of the costs involved and whatever amount of security deposit remains after deducting for those costs. And the estimate does not have to come from a third party – it can be the landlord's own estimate.***

The rule requires only that the landlord submit ***“a written statement accounting for all amounts withheld”*** within the 21 days. The rule provides that ***“the statement shall describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation.”*** ATCP 134.06 (4)

The analysis of the LRB is misleading, because it says that the security deposit must be



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returned within 21 days.

2. **The Administrative Rules Require the Landlord to do *Something* Within 21 Days Because, Historically, the Failure of Landlords to Return Security Deposits *At All* Has Been the Chief Complaint in Landlord-Tenant Affairs.**

Easily the chief complaint in landlord-tenant affairs has been the refusal of landlords to return security deposits. It is one of the principle reasons why the landlord-tenant code was authorized by the legislature and created by DATCP to begin with. *It remains the chief complaint to this day.* According to DATCP statistics, last year, of some *1357 complaints, 642 were for failure to return security deposits.*

The problem is that some landlords take advantage of the fact that tenants have to go to court to get their security deposits back and tenants are reluctant to do that because of the difficulty involved in the process. Because the law is vague on what costs landlords may deduct for, it makes it difficult for tenants. As a result, the process acts as a deterrent for tenants and so some landlords will not return deposits until they are forced to do so.

By extending the time for landlords to do *anything*, AB 178 just exacerbates the problem.

3. **21 Days is More Than Enough Time for a Landlord to *At Least* Provide an Estimate**

21 days is more than enough time for a landlord to submit such a preliminary statement. The law only requires that the *landlord do something within 21 days* or the landlord loses the right to keep the security deposit, under ATCP 134.06 (2). There is definitely no need to extend that 21 days to 45 days. We have to assume that AB 178 assumes that the law requires a *final billing* for the cost of repairs within 21 days, in attempting to extend that time to 45 days. The law simply does not do that.

4. **The Bill Contains a Superfluous Provision Requiring the Administrative Rules to Define “Security Deposit,” “What Constitutes Surrender,” and “What Amounts May be Reasonably Withheld from a Security Deposit,” Because the Rules Already Do All of These.**

The bill calls for administrative rules to be adopted to define what is a security deposit and what amounts may be withheld from a security deposit. This is superfluous, because the rules already define both of these and if there is a need for a better definition, DATCP should be requested to change the rule. The fact is that both of these definitions in the current rule were reached only after long discussions were held.

The same is true for the definition of “surrender.” The definition of surrender was the subject of protracted discussions in the ad hoc committee referred to above. What resulted is an elaborate definition that exists in ATCP 134.06 (2)(b). This definition was widely sought by the landlord community and they were very happy with the definition that was achieved by the ad hoc committee.