

Chapter Ag 134

RESIDENTIAL RENTAL PRACTICES

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Ag 134.01 Scope and application of rules. This chapter is adopted under authority of s. 100.20, Stats., and applies to the rental of dwelling units located in this state. It does not apply to the rental or occupancy of dwelling units:

- (1) Operated by an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services;
- (2) Operated by a fraternal or social organization for the benefit of its members only;
- (3) Under a contract of sale, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;
- (4) In a hotel, motel, boarding house, lodging house or other similar premises on a transient basis;
- (5) Furnished free of charge, or free of charge to employes conditioned upon employment in and about the premises;
- (6) Under a rental agreement covering premises used by the occupant primarily for agricultural purposes;
- (7) Owned and operated by government, or a subdivision or agency of government.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

Ag 134.02 Definitions. (1) "Building and housing codes" means laws, ordinances, or governmental regulations concerning the construction, maintenance, habitability, operation, occupancy, use or appearance of any premises or dwelling unit.

(2) "Dwelling unit" means a structure or that part of a structure that is primarily used as a home, residence, or place of abode. The term includes a mobile home or mobile home site as defined in s. Ag 125.01 (1) and (2), Wis. Adm. Code. E125.

(3) "Earnest money deposit" means the total of any payments or deposits, however denominated or described, given by a prospective tenant to a landlord in return for the option of entering into a rental agreement in the future, or for having a rental application considered by the landlord.

(4) "Form provision" means a written rule, regulation, or rental or contract provision that has not been specifically and separately negoti-

ated and agreed to by the tenant in writing. Any provision appearing as part of a preprinted form is rebuttably presumed to be a form provision.

(5) "Landlord" means the owner or lessor of a dwelling unit under any rental agreement, and any agent acting on the owner's or lessor's behalf. The term includes sublessors, other than persons subleasing individual units occupied by them.

(6) "Lease" means a lease as defined in s. 704.01 (1), Stats.

(7) "Owner" means one or more persons, jointly or severally, vested with all or part of the legal title to the premises or all or part of the beneficial ownership and right to present use and enjoyment of the premises. The term includes a mortgagee in possession.

(8) "Person" means an individual, partnership, corporation, association, estate, trust, and any other legal or business entity.

(9) "Premises" means a dwelling unit and the structure of which it is a part and all appurtenances, grounds, areas, furnishings and facilities held out for the use or enjoyment of the tenant or tenants generally.

(10) "Rental agreement" means any agreement, whether written or oral, for the rental or lease of a dwelling unit or premises, and includes contracts or rules and regulations which are incidental to, or adopted pursuant to a rental agreement.

(11) "Security deposit" means the total of all payments and deposits given by a tenant to the landlord as security for the performance of the tenant's obligations, and includes all rent payments in excess of 1 month's prepaid rent.

(12) "Tenant" means a person occupying, or entitled to present or future occupancy of a dwelling unit under a rental agreement, and includes persons occupying dwelling units under periodic tenancies and tenancies at will. The term applies to persons holding over after termination of tenancy until removed from the dwelling unit by sheriff's execution of a judicial writ of restitution issued under s. 299.44, [799.44] Stats. It also applies to persons entitled to the return of a security deposit, or an accounting for the security deposit.

(13) "Tenancy" means occupancy, or a right to present occupancy under a rental agreement, and includes periodic tenancies and tenancies at will. The term does not include the occupancy of a dwelling unit without consent of the landlord after expiration of a lease or termination of tenancy under ch. 704, Stats.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

Ag 134.03 Rental documents; deposit receipts. (1) COPIES OF RENTAL AGREEMENTS, RULES. Rental agreements and rules and regulations established by the landlord, if in writing, shall be furnished to prospective tenants for their inspection before a rental agreement is entered into, and before any earnest money or security deposit is accepted from the prospective tenant. Copies shall be given to the tenant at the time of agreement.

(2) RECEIPTS FOR TENANT DEPOSITS. Immediately upon accepting any earnest money or security deposit, the landlord shall provide the tenant or prospective tenant with a written receipt for the deposit, stating the

nature of the deposit and its amount. A receipt is not required where payment is made by check bearing a notation describing the purpose for which it was given, unless requested by the tenant.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

Ag 134.04 Disclosure requirements. (1) IDENTIFICATION OF LANDLORD OR AUTHORIZED AGENTS. (a) The landlord shall, except as provided under par. (c), disclose to the tenant in writing, at or before the time a rental agreement is entered into, the name and address of:

1. The person or persons authorized to collect or receive rent and manage and maintain the premises, and who can readily be contacted by the tenant; and

2. The owner of the premises or other person authorized to accept service of legal process and other notices and demands on behalf of the owner. The address disclosed under this subdivision shall be an address within the state at which service of process can be made in person.

(b) The landlord and any successor of the landlord shall keep tenants informed of any changes in the information required under par. (a).

(c) This subsection does not apply to an owner-occupied structure containing no more than 4 dwelling units.

(2) CODE VIOLATIONS AND CONDITIONS AFFECTING HABITABILITY. Before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant, the landlord shall disclose to the prospective tenant:

(a) All uncorrected building and housing code violations of which the landlord has received notice from code enforcement authorities, and which affect the individual dwelling unit and common areas of the premises. Disclosure shall be made by exhibiting to the prospective tenant those portions of the building and housing code notices or orders which have not been fully complied with. Code violations shall not be considered corrected until their correction has been reported to code enforcement authorities.

(b) The following conditions affecting habitability, the existence of which the landlord knows or could know on basis of reasonable inspection, whether or not notice has been received from code enforcement authorities:

1. The dwelling unit lacks hot and cold running water, plumbing or sewage disposal facilities in good operating condition.

2. Heating facilities serving the dwelling unit are not in safe operating condition, or are not capable of maintaining a temperature in the dwelling unit of at least 67°F (19°C) during all seasons of the year in which the dwelling unit may be occupied.

3. The dwelling unit is not served by electricity, or the electrical wiring, outlets, fixtures or other components of the electrical system are not in safe operating condition.

4. Any structural or other conditions in the dwelling unit or premises which constitute a substantial hazard to the health or safety of the tenant, or create an unreasonable risk of personal injury as a result of any

reasonably foreseeable use of the premises other than negligent use or abuse of the premises by the tenant.

(3) **UTILITY CHARGES.** If charges for water, heat or electricity are not included in the rent, the landlord shall disclose this fact to the tenant before entering into a rental agreement or accepting any earnest money or security deposit from the prospective tenant. If individual dwelling units and common areas are not separately metered, and if the charges are not included in the rent, the landlord shall disclose the basis on which charges for utility services will be allocated among individual dwelling units.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

Ag 134.05 Earnest money deposits. (1) **REFUND OR CREDIT OF EARNEST MONEY DEPOSIT.** (a) If a rental application is rejected by the landlord, the entire amount of any earnest money deposit shall be immediately refunded to the prospective tenant.

SP. (b) If a rental agreement is entered into, the entire amount of any earnest money deposit shall be applied toward the payment of rent or a security deposit, or returned to the tenant.

(2) **LIMITATIONS ON EARNEST MONEY WITHHOLDING.** (a) No portion of an earnest money deposit may be permanently withheld by a landlord in excess of actual costs and damages incurred because of the failure of a prospective tenant to enter into a rental agreement. Deposits may not be permanently withheld as compensation for lost rents unless the landlord has made reasonable efforts to mitigate the rental loss in accordance with s. 704.29, Stats.

(b) Upon request by any person giving an earnest money deposit, the landlord shall provide that person with a written statement accounting for all amounts permanently withheld from the deposit.

History: Cr. Register, February, 1980, No. 290, eff. 5-1-80.

Ag 134.06 Security deposits. (1) **CHECK-IN PROCEDURES; PRE-EXISTING DAMAGES.** Whenever a security deposit is required, the landlord shall:

(a) Upon acceptance of the deposit, inform the tenant that the tenant may inspect the dwelling unit and notify the landlord of any damages or defects which existed before the beginning of the tenancy. The tenant shall be given at least 7 days after the beginning of tenancy for the inspection and notification.

(b) Furnish the tenant with a written itemized description of any physical damages or defects for which deductions from the previous tenant's security deposit were made. The description shall be furnished to the new tenant before a security deposit is accepted, or at the same time the previous tenant is notified of security deposit deductions under sub.

(4), whichever occurs later. If damages or defects have been repaired by the landlord, this may be noted in connection with the damage description. Disclosure of the previous tenant's identity, or the amounts withheld from the previous tenant's security deposit, is not required.

(2) **RETURN OF SECURITY DEPOSITS.** The landlord shall, within 21 days after surrender of the premises, return all security deposits less any