

## CHAPTER 704

## LANDLORD AND TENANT

704.01	Definitions	704.19	Notice necessary to terminate periodic tenancies and tenancies at will.
704.03	Requirement of writing for rental agreements and termination	704.21	Manner of giving notice.
704.05	Rights and duties of landlord and tenant in absence of written agreement to contrary	704.23	Removal of tenant on termination of tenancy.
704.07	Repairs; untenantability	704.25	Effect of holding over after expiration of lease; removal of tenant.
704.09	Transferability; effect of assignment or transfer; remedies.	704.27	Damages for failure of tenant to vacate at end of lease or after notice.
704.11	Lien of landlord.	704.29	Recovery of rent and damages by landlord; mitigation.
704.13	Acts of tenant not to affect rights of landlord	704.31	Remedy on default in long terms; improvements.
704.15	Requirement that landlord notify tenant of automatic renewal clause	704.40	Remedies available when tenancy dependent upon life of another terminates.
704.17	Notice terminating tenancies for failure to pay rent or other breach by tenant.		

**704.01 Definitions.** In this chapter, unless the context indicates otherwise:

(1) "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time. A lease is for a definite period of time if it has a fixed commencement date and a fixed expiration date or if the commencement and expiration can be ascertained by reference to some event, such as completion of a building. A lease is included within this chapter even though it may also be treated as a conveyance under ch. 706. An agreement for transfer of possession of only personal property is not a lease.

(2) "Premises" mean the property covered by the lease, including not only the realty and fixtures, but also any personal property furnished with the realty.

(3) "Tenancy" includes a tenancy under a lease, a periodic tenancy or a tenancy at will.

(4) "Periodic tenant" means a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day-to-day, week-to-week, month-to-month, year-to-year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent-paying dates normally evidencing that intent.

(5) "Tenant at will" means any tenant holding with the permission of his landlord without a valid lease and under circumstances not involving periodic payment of rent; but a person holding possession of real property under a contract of purchase or an employment contract is not a tenant under this chapter.

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

**704.03 Requirement of writing for rental agreements and termination. (1) ORIGINAL AGREEMENT.**

A lease for more than a year, or a contract to make such a lease, is not enforceable unless it meets the requirements of s. 706.02 and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease and a reasonably definite description of the premises, or unless a writing signed by the landlord and the tenant sets forth the amount of rent or other consideration, the duration of the lease and a reasonably definite description of the premises and the commencement date is established by entry of the tenant into possession under the writing. Sections 704.05 and 704.07 govern as to matters within the scope of such sections and not provided for in such written lease or contract.

(2) ENTRY UNDER UNENFORCEABLE LEASE. If a tenant enters into possession under a lease for more than one year which does not meet the requirements of sub. (1), and the tenant pays rent on a periodic basis, he becomes a periodic tenant. If the premises in such case are used for residential purposes and the rent is payable monthly, he becomes a month-to-month tenant; but if the use is agricultural or nonresidential, the tenant becomes a year-to-year tenant without regard to the rent-payment periods. Except for duration of the tenancy and matters within the scope of ss. 704.05 and 704.07, the tenancy is governed by the terms and conditions agreed upon. Notice as provided in s. 704.19 is necessary to terminate such a periodic tenancy.

(3) ASSIGNMENT. An assignment by the tenant of a leasehold interest which has an unexpired period of more than one year is not enforceable against the assignor unless the assignment is in writing reasonably identifying the

lease and signed by the assignor; and any agreement to assume the obligations of the original lease which has an unexpired period of more than one year is not enforceable unless in writing signed by the assignee.

**(4) TERMINATION OF WRITTEN LEASE PRIOR TO NORMAL EXPIRATION DATE.** An agreement to terminate a tenancy more than one year prior to the expiration date specified in a valid written lease is not enforceable unless it is in writing signed by both parties. Any other agreement between the landlord and tenant to terminate a lease prior to its normal expiration date, or to terminate a periodic tenancy or tenancy at will without the statutory notice required by s. 704.19 may be either oral or written. Nothing herein prevents surrender by operation of law.

**(5) PROOF.** In any case where a lease or agreement is not in writing signed by both parties but is enforceable under this section, the lease or agreement must be proved by clear and convincing evidence.

**704.05 Rights and duties of landlord and tenant in absence of written agreement to contrary. (1) WHEN SECTION APPLICABLE.** So far as applicable, this section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision in writing signed by both the landlord and the tenant. This section applies to any tenancy.

**(2) POSSESSION OF TENANT AND ACCESS BY LANDLORD.** Until the expiration date specified in the lease, or the termination of a periodic tenancy or tenancy at will, and so long as the tenant is not in default, the tenant has the right to exclusive possession of the premises, except as hereafter provided. The landlord may upon advance notice and at reasonable times inspect the premises, make repairs and show the premises to prospective tenants or purchasers; and if the tenant is absent from the premises and the landlord reasonably believes that entry is necessary to preserve or protect the premises, the landlord may enter without notice and with such force as appears necessary.

**(3) USE OF PREMISES, ADDITIONS OR ALTERATIONS BY TENANT.** The tenant can make no physical changes in the nature of the premises, including decorating, removing, altering or adding to the structures thereon, without prior consent of the landlord. The tenant cannot use the premises for any unlawful purpose nor in such manner as to interfere unreasonably with use by another occupant of the same building or group of buildings.

**(4) TENANT'S FIXTURES.** At the termination of the tenancy, the tenant may remove any fixtures installed by him if he either restores the

premises to their condition prior to the installation or pays to the landlord the cost of such restoration. Where such fixtures were installed to replace similar fixtures which were part of the premises at the time of the commencement of the tenancy, and the original fixtures cannot be restored the tenant may remove fixtures installed by him only if he replaces them with fixtures at least comparable in condition and value to the original fixtures. The tenant's right to remove fixtures is not lost by an extension or renewal of a lease without reservation of such right to remove. This subsection applies to any fixtures added by the tenant for his convenience as well as those added for purposes of trade, agriculture or business; but this subsection does not govern the rights of parties other than the landlord and tenant.

**(5) STORAGE OR DISPOSITION OF PERSONALTY LEFT BY TENANT. (a) Storage, sale or disposition of personalty less than \$100 in value.** If a tenant removes from the premises and leaves personal property of an apparent total value of less than \$100, the landlord may:

1. Store such personalty, with or without notice to the tenant, on or off the premises, with a lien on the personalty for actual cost of removal and storage or, if stored by the landlord, for the reasonable value of storage;

2. Give the tenant notice, personally or by ordinary mail addressed to the tenant at his last known address, of the landlord's intent to dispose of the personalty by sale or other appropriate means if the property is not repossessed by the tenant within 5 days of such personal service or 8 days of the date of mailing. If the tenant fails to repossess within the time specified, the landlord may proceed to dispose of such property by private or public sale or any other appropriate means. The landlord may deduct from the proceeds of sale any costs of sale and any storage charges if he has first stored the personalty under subd. 1, and send the balance of the proceeds to the tenant by registered mail addressed to his last known address; if such proceeds are returned to the landlord and are not claimed within 6 months after the date on which the tenant vacated the premises, the proceeds belong to the landlord.

**(b) Storage of personalty \$100 or more in value.** If a tenant removes from the premises and leaves personal property of an apparent total value of \$100 or more, the landlord may store such personal property, with or without notice to the tenant, on or off the premises; in such case the landlord has a lien on the property for the actual cost of removal and storage or, if stored by the landlord, for the reasonable value of such storage. This lien can be foreclosed by sale of the property substantially in conformity with s.

409.504, and the landlord shall have the rights and duties of a secured party thereunder. When s. 409.504 is applied to the enforcement of this lien, the word debtor or equivalent, when used therein, shall be deemed to refer to the tenant and any other person having an interest shown by instrument filed as required by law or shown in the records of the department of transportation, and the word "indebtedness" or equivalent shall include all claims of the landlord for removal, storage, disposition, arranging for the sale and reasonable attorney's fees and legal expenses.

(c) *Rights of third persons.* The landlord's lien and power to dispose as provided by this subsection apply to any property left on the premises by the tenant, whether owned by him or by others. Such lien has priority over any ownership or security interest and the power to dispose under this subsection applies notwithstanding rights of others existing under any claim of ownership or security interest. If the landlord proceeds under par. (a) 2, notice of intended disposition need be given only to the tenant; if the landlord proceeds under par. (b), notice of intended disposition shall be given as required by s. 409.504. In either event, the tenant or any secured party shall have the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of the landlord's charges for removal, storage, disposition, arranging for the sale and reasonable attorney's fees and legal expenses.

(d) *Other procedure.* The remedies of this subsection are not exclusive and shall not prevent the landlord from resorting to any other available judicial procedure.

Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? Love, 1975 WLR 19.

**704.07 Repairs; untenantability. (1) APPLICATION OF SECTION.** This section applies to any tenancy if there is no contrary provision in writing signed by both parties. Nothing in this section is intended to affect rights and duties arising under other provisions of the statutes.

**(2) DUTY OF LANDLORD.** (a) Unless the repair was made necessary by the negligence or improper use of the premises by the tenant, the landlord is under duty to:

1. Keep in reasonable state of repair portions of the premises over which he maintains control;
2. Keep in a reasonable state of repair all equipment under his control necessary to supply services which he has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator or air-conditioning;
3. Make all necessary structural repairs;

4. Repair or replace any plumbing, electrical wiring, machinery or equipment furnished with the premises and no longer in reasonable working condition, except as provided in sub. (3) (b).

(b) If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from his duty as to the other tenants to make repairs as provided in par. (a).

(c) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either sub. (3) or (4) governs.

**(3) DUTY OF TENANT.** (a) If the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant.

(b) The tenant is also under a duty to keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order if repair can be made at cost which is minor in relation to the rent.

**(4) UNTENANTABILITY BECAUSE OF DAMAGE BY FIRE, WATER OR OTHER CASUALTY, OR HAZARD TO HEALTH.** If the premise becomes untenantable because of damage by fire, water or other casualty or because of any condition hazardous to health, the tenant may remove from the premises unless the landlord proceeds promptly to repair or rebuild or eliminate the health hazard; or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on him. If the landlord proceeds to repair or rebuild the premises or eliminate the hazard to health, and the tenant remains in possession, rent abates to the extent the tenant is deprived of the full normal use of the premises. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenantable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenantable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.

The remedy provided by (3) does not exclude diminution of market value as an alternative method of computing such damages, and although the former is to be preferred where

the property is easily repairable and the latter where the injury does not destroy the property, evidence of each method may be introduced by either party with the lesser amount awardable as the proper measure of damages. *Laska v Steinhilber*, 69 W (2d) 307, 231 NW (2d) 196.

Landlord and tenant law—the implied warranty of habitability in residential leases 58 MLR 191.

**704.09 Transferability; effect of assignment or transfer; remedies. (1) TRANSFERABILITY OF INTEREST OF TENANT OR LANDLORD.** A tenant under a tenancy at will or any periodic tenancy less than year-to-year may not assign or sublease except with the agreement or consent of the landlord. The interest of any other tenant or the interest of any landlord may be transferred except as the lease expressly restricts power to transfer. A lease restriction on transfer is construed to apply only to voluntary transfer unless there is an express restriction on transfer by operation of law.

**(2) EFFECT OF TRANSFER ON LIABILITY OF TRANSFEROR.** In the absence of an express release or a contrary provision in the lease, transfer or consent to transfer does not relieve the transferring party of his contractual obligations under the lease, except in the special situation governed by s. 704.25 (5).

**(3) COVENANTS WHICH APPLY TO TRANSFEREE.** All covenants and provisions in a lease which are not either expressly or by necessary implication personal to the original parties are enforceable by or against the successors in interest of any party to the lease. However, a successor in interest is liable in damages, or entitled to recover damages, only for a breach which occurs during the period when such successor holds his interest, unless he has by contract assumed greater liability; a personal representative may also recover damages for a breach for which his decedent could have recovered.

**(4) SAME PROCEDURAL REMEDIES.** The remedies available between the original landlord and tenant are also available to or against any successor in interest to either party.

**(5) CONSENT AS AFFECTING SUBSEQUENT TRANSFERS.** If a lease restricts transfer, consent to a transfer or waiver of a breach of the restriction is not a consent or waiver as to any subsequent transfers.

History: 1971 c. 211 s. 126.

**704.11 Lien of landlord.** Except as provided in ss. 289.43 and 704.05 (5) or by express agreement of the parties, the landlord has no right to a lien on the property of the tenant; the common-law right of a landlord to distrain for rent is abolished.

**704.13 Acts of tenant not to affect rights of landlord.** No act of a tenant in acknowledging as landlord a person other than his original landlord or the latter's successors in interest can prejudice the right of the original landlord or his successors to possession of the premises.

**704.15 Requirement that landlord notify tenant of automatic renewal clause.** A provision in a lease of residential property that the lease shall be automatically renewed or extended for a specified period unless the tenant or either party gives notice to the contrary prior to the end of the lease is not enforceable against the tenant unless the lessor, at least 15 days but not more than 30 days prior to the time specified for the giving of such notice to him, gives to the tenant written notice in the same manner as specified in s. 704.21 calling the attention of the tenant to the existence of the provision in the lease for automatic renewal or extension.

**704.17 Notice terminating tenancies for failure to pay rent or other breach by tenant. (1) MONTH-TO-MONTH AND WEEK-TO-WEEK TENANCIES.** (a) If a month-to-month tenant or a week-to-week tenant fails to pay rent when due, his tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. A month-to-month tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice requiring him to vacate on or before a date at least 14 days after the giving of the notice.

(b) If a month-to-month tenant commits waste or breaches any covenant or condition of his agreement (other than for payment of rent), the tenancy can be terminated if the landlord gives the tenant notice requiring him to vacate on or before a date at least 14 days after the giving of the notice.

**(2) TENANCIES UNDER A LEASE FOR ONE YEAR OR LESS, AND YEAR-TO-YEAR TENANCIES.** (a) If a tenant under a lease for a term of one year or less, or a year-to-year tenant, fails to pay any instalment of rent when due, his tenancy is terminated if the landlord gives the tenant notice requiring him to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly. If a tenant has been given such a notice and has paid his rent on or before the specified date, or been permitted by the landlord to remain in possession contrary to such notice, and if within one year of any prior default in payment of rent for which notice was given the tenant

fails to pay a subsequent instalment of rent on time, his tenancy is terminated if the landlord, while the tenant is in default in payment of rent, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(b) If such a tenant commits waste or breaches any covenant or condition of his lease (other than for payment of rent), his tenancy is terminated if the landlord gives the tenant a notice requiring the tenant to remedy the default or vacate the premises on or before a date at least 5 days after the giving of the notice, and if the tenant fails to comply with such notice. A tenant is deemed to be complying with the notice if promptly upon receipt of such notice he takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for his breach. If within one year from the giving of any such notice, the tenant again commits waste or breaches the same or any other covenant or condition of his lease (other than for payment of rent), his tenancy is terminated if the landlord, prior to the tenant's remedying the waste or breach, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

(3) LEASE FOR MORE THAN ONE YEAR. If a tenant under a lease for more than one year fails to pay rent when due, or commits waste, or breaches any other covenant or condition of his lease, the tenancy is terminated if the landlord gives the tenant notice requiring him to pay the rent, repair the waste, or otherwise comply with the lease on or before a date at least 30 days after the giving of the notice, and if the tenant fails to comply with the notice. A tenant is deemed to be complying with the notice if promptly upon receipt of such notice he takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the landlord and the tenant makes a bona fide and reasonable offer to pay the landlord all damages for his breach; but in case of failure to pay rent, all rent due must be paid on or before the date specified in the notice.

(4) FORM OF NOTICE AND MANNER OF GIVING. Notice must be in writing and given as specified in s. 704.21. If so given, the tenant is not entitled to possession or occupancy of the premises after the date of termination specified in the notice.

(5) CONTRARY PROVISION IN THE LEASE. Provisions in the lease or rental agreement for

termination contrary to this section are invalid except in leases for more than one year.

Only a limited number of defenses may be raised in an eviction action, including such defenses as the landlord's title to the premises and whether the eviction was in retaliation for the tenant's reporting housing violations, but not including those raised by defendants as to violation of federal antitrust and state franchise laws—as well as public policy defenses. *Clark Oil & Refining Corp. v. Leistikow*, 69 W (2d) 226, 230 NW (2d) 736.

#### 704.19 Notice necessary to terminate periodic tenancies and tenancies at will. (1)

SCOPE OF SECTION. The following types of tenancies, however created, are subject to this section:

(a) A periodic tenancy, whether a tenancy from year-to-year, from month-to-month, or for any other periodic basis according to which rent is regularly payable; and

(b) A tenancy at will.

(2) REQUIREMENT OF NOTICE. Such a tenancy can be terminated by either the landlord or the tenant only by giving to the other party written notice complying with this section, unless a) the parties have agreed expressly upon another method of termination and such agreement is established by clear and convincing proof, b) termination has been effected by a surrender of the premises, or c) sub. (6) applies. A periodic tenancy can be terminated by notice under this section only at the end of a rental period; in the case of a tenancy from year-to-year the end of the rental period is the end of the rental year even though rent is payable on a more frequent basis. Nothing in this section prevents termination of a tenancy for nonpayment of rent or breach of any other condition of the tenancy, as provided in s. 704.17.

(3) LENGTH OF NOTICE. At least 28 days' notice must be given except in the following cases: If rent is payable on a basis less than monthly, notice at least equal to the rent-paying period is sufficient; all agricultural tenancies from year-to-year require at least 90 days' notice.

(4) CONTENTS OF NOTICE. Notice must be in writing, formal or informal, and substantially inform the other party to the landlord-tenant relation of the intent to terminate the tenancy and the date of termination. A notice is not invalid because of errors in the notice which do not mislead, including omission of the name of one of several landlords or tenants.

(5) EFFECT OF INACCURATE TERMINATION DATE IN NOTICE. If a notice provides that a periodic tenancy is to terminate on the first day of a succeeding rental period rather than the last day of a rental period, and the notice was given in sufficient time to terminate the tenancy at the end of the rental period, the notice is valid; if the notice was given by the tenant, the landlord may

require him to remove on the last day of the rental period, but if the notice was given by the landlord the tenant may remove on the last day specified in the notice. If a notice specified any other inaccurate termination date, because it does not allow the length of time required under sub. (3) or because it does not correspond to the end of a rental period in the case of a periodic tenancy, the notice is valid but not effective until the first date which could have been properly specified in such notice subsequent to the date specified in the notice, but the party to whom the notice is given may elect to treat the date specified in the notice as the legally effective date. If a notice by a tenant fails to specify any termination date, the notice is valid but not effective until the first date which could have been properly specified in such notice as of the date the notice is given.

**(6) TENANT MOVING OUT WITHOUT NOTICE.** If any periodic tenant vacates the premises without notice to the landlord and fails to pay rent when due for any period, such tenancy is terminated as of the first date on which it would have terminated had the landlord been given proper notice on the day he learns of such removal.

**(7) WHEN NOTICE GIVEN.** Notice is given on the day specified below, which is counted as the first day of the notice period:

(a) The day of giving or leaving under s. 704.21 (1) (a) and (2) (a) and (b);

(b) The day of leaving or affixing a copy or the date of mailing, whichever is later, under s. 704.21 (1) (b) and (c);

(c) The 2nd day after the day of mailing if the mail is addressed to a point within the state, and the 5th day after the day of mailing in all other cases, under s. 704.21 (1) (d) and (2) (c);

(d) The day of service under s. 704.21 (1) (e) and (2) (d).

(e) The day of actual receipt by the other party under s. 704.21 (5).

**(8) EFFECT OF NOTICE.** If a notice is given as required by this section, the tenant is not entitled to possession or occupancy of the premises after the date of termination as specified in the notice.

A landlord cannot evict a tenant solely because the tenant has reported building code violations. *Dickhut v. Norton*, 45 W (2d) 389, 173 NW (2d) 297.

Retaliatory eviction as a defense. 54 MLR 239.  
Landlords' liability for defective premises: caveat lessee, negligence, or strict liability? *Love*, 1975 WLR 19.

**704.21 Manner of giving notice. (1) NOTICE BY LANDLORD.** Notice by the landlord or a person in his behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the tenant or by leaving a copy at his usual

place of abode in the presence of some competent member of his family at least 14 years of age, who is informed of the contents of the notice;

(b) By leaving a copy with any competent person apparently in charge of the rented premises or occupying the premises or a part thereof, and by mailing a copy by regular or other mail to the tenant's last-known address;

(c) If notice cannot be given under par. (a) or (b) with reasonable diligence, by affixing a copy of the notice in a conspicuous place on the rented premises where it can be conveniently read and by mailing a copy by regular or other mail to the tenant's last-known address;

(d) By mailing a copy of the notice by registered or certified mail to the tenant at his last-known address;

(e) By serving the tenant as prescribed in s. 801.11 for the service of a summons.

**(2) NOTICE BY TENANT.** Notice by the tenant or a person in his behalf must be given under this chapter by one of the following methods:

(a) By giving a copy of the notice personally to the landlord or to any person who has been receiving rent or managing the property as the landlord's agent, or by leaving a copy at the landlord's usual place of abode in the presence of some competent member of his family at least 14 years of age, who is informed of the contents of the notice;

(b) By giving a copy of the notice personally to a competent person apparently in charge of the landlord's regular place of business or the place where the rent is payable;

(c) By mailing a copy by registered or certified mail to the landlord at his last-known address or to the person who has been receiving rent or managing the property as the landlord's agent at his last-known address;

(d) By serving the landlord as prescribed in s. 801.11 for the service of a summons.

**(3) CORPORATION OR PARTNERSHIP.** If notice is to be given to a corporation notice may be given by any method provided in sub. (1) or (2) except that notice under sub. (1) (a) or (2) (a) may be given only to an officer, director, registered agent or managing agent, or left with an employe in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in sub. (1) or (2) except that notice under sub. (1) (a) or (2) (a) may be given only to a general partner or managing agent of the partnership, or left with an employe in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of his family at least 14 years of

age, who is informed of the contents of the notice.

(4) NOTICE TO ONE OF SEVERAL PARTIES. If there are 2 or more landlords or 2 or more cotenants of the same premises, notice given to one is deemed to be given to the others also.

(5) EFFECT OF ACTUAL RECEIPT OF NOTICE. If notice is not properly given by one of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the party alleging actual receipt to prove the fact by clear and convincing evidence.

History: Sup. Ct. Order, 67 W (2d) 777.

**704.23 Removal of tenant on termination of tenancy.** If a tenant remains in possession without consent of his landlord after termination of his tenancy, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

**704.25 Effect of holding over after expiration of lease; removal of tenant.** (1) REMOVAL AND RECOVERY OF DAMAGES. If a tenant holds over after expiration of a lease, the landlord may in every case proceed in any manner permitted by law to remove the tenant and recover damages for such holding over.

(2) CREATION OF PERIODIC TENANCY BY HOLDING OVER. (a) *Nonresidential leases for a year or longer.* If premises are leased for a year or longer primarily for other than private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a year-to-year basis.

(b) *All other leases.* If premises are leased for less than a year for any use, or if leased for any period primarily for private residential purposes, and the tenant holds over after expiration of the lease, the landlord may elect to hold the tenant on a month-to-month basis; but if such lease provides for a weekly or daily rent, the landlord may hold the tenant only on the periodic basis on which rent is computed.

(c) *When election takes place.* Acceptance of rent for any period after expiration of a lease or other conduct manifesting the landlord's intent to allow the tenant to remain in possession after the expiration date constitutes an election by the landlord under this section unless the landlord has already commenced proceedings to remove the tenant.

(3) TERMS OF TENANCY CREATED BY HOLDING OVER. A periodic tenancy arising under this section is upon the same terms and conditions as those of the original lease except that any right of the tenant to renew or extend the lease, or to

purchase the premises, or any restriction on the power of the landlord to sell without first offering to sell the premises to the tenant, does not carry over to such a tenancy.

(4) EFFECT OF CONTRARY AGREEMENT. This section governs except as the parties agree otherwise either by the terms of the lease itself or by an agreement at any subsequent time.

(5) HOLDOVER BY ASSIGNEE OR SUBTENANT. If an assignee or subtenant holds over after the expiration of the lease, the landlord may either elect to hold the assignee or subtenant as a periodic tenant under sub. (2) (but not the original tenant unless he participated in the holding over) or remove any person in possession and recover damages from the assignee or subtenant or from the original tenant, except that the landlord may not recover damages from the original tenant if the landlord has been accepting rent directly from the assignee or subtenant.

(6) NOTICE TERMINATING A TENANCY CREATED BY HOLDING OVER. Any tenancy created pursuant to this section is terminable under s. 704.19.

**704.27 Damages for failure of tenant to vacate at end of lease or after notice.** If a tenant remains in possession without consent of his landlord after expiration of a lease or termination of a tenancy by notice given by either the landlord or the tenant, or after termination by valid agreement of the parties, the landlord may recover from the tenant damages suffered by the landlord because of the failure of the tenant to vacate within the time required. In absence of proof of greater damages, the landlord may recover as minimum damages twice the rental value apportioned on a daily basis for the time the tenant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the tenant for the prior rental period, and includes the money equivalent of any obligations undertaken by the tenant as part of the rental agreement, such as payment of taxes, insurance and repairs.

**704.29 Recovery of rent and damages by landlord; mitigation.** (1) SCOPE OF SECTION. If a tenant unjustifiably removes from the premises prior to the effective date for termination of his tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease, the landlord can recover rent and damages except amounts which he could mitigate in accordance with this section, unless he has expressly agreed to accept a

surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease, a periodic tenant, or an assignee of either.

**(2) MEASURE OF RECOVERY.** In any claim against a tenant for rent and damages, or for either, the amount of recovery is reduced by the net rent obtainable by reasonable efforts to rerent the premises. Reasonable efforts mean those steps which the landlord would have taken to rent the premises if they had been vacated in due course, provided that such steps are in accordance with local rental practice for similar properties. In the absence of proof that greater net rent is obtainable by reasonable efforts to rerent the premises, the tenant is credited with rent actually received under a rental agreement minus expenses incurred as a reasonable incident of acts under sub. (4), including a fair proportion of any cost of remodeling or other capital improvements. In any case the landlord can recover, in addition to rent and other elements of damage, all reasonable expenses of listing and advertising incurred in rerenting and attempting to rerent (except as taken into account in computing the net rent under the preceding sentence). If the landlord has used the premises as part of reasonable efforts to rerent, under sub. (4) (c), the tenant is credited with the reasonable value of the use of the premises, which is presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it is reasonable for the landlord to rent the other premises for his own account in preference to those vacated by the defaulting tenant.

**(3) BURDEN OF PROOF.** The landlord must allege and prove that he has made efforts to comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of any offer to rent the premises or a part thereof was not reasonable, that any terms and conditions upon which the landlord has in fact re-rented were not reasonable, and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with sub. (4) (c); the tenant also has the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by rerenting.

**(4) ACTS PRIVILEGED IN MITIGATION OF RENT OR DAMAGES.** The following acts by the landlord do not defeat his right to recover rent

and damages and do not constitute an acceptance of surrender of the premises:

(a) Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises;

(b) Rerenting the premises or a part thereof, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease;

(c) Use of the premises by the landlord until such time as rerenting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that he will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period;

(d) Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant.

Landlord has obligation to rerent when tenant breaches lease; specific performance is not proper remedy. *Chi-Mil Corp. v. W. T. Grant Co.* 422 F Supp 46.

**704.31 Remedy on default in long terms; improvements. (1)**

If there is a default in the conditions in any lease or a breach of the covenants thereof and such lease provides for a term of 30 years or more and requires the tenant to erect or construct improvements or buildings upon the land demised at his own cost and exceeding in value the sum of \$50,000, and such improvements have been made and the landlord desires to terminate the lease and recover possession of the property described therein freed from all liens, claims or demands of such lessee, the landlord may, in case of any breach or default, commence an action against the tenant and all persons claiming under him to recover the possession of the premises leased and proceed in all respects as if the action was brought under the statute to foreclose a mortgage upon real estate, except that no sale of the premises shall be ordered.

**(2)** The judgment shall determine the breach or default complained of, fix the amount due the landlord at such time, and state the several amounts to become due within one year from the entry thereof, and provide that unless the amount adjudged to be due from the tenant, with interest thereon as provided in the lease or by law, shall be paid to the landlord within one year from the entry thereof and the tenant shall, within such period, fully comply with the judgment requiring him to make good any default in the conditions of the lease, that said tenant and those claiming under him shall be forever barred



and foreclosed of any title or interest in the premises described in the lease and that in default of payment thereof within such year the tenant shall be personally liable for the amount thereof. During said year ensuing the date of the entry of such judgment the possession of the demised premises shall remain in the tenant and he shall receive the rents, issues and profits thereof; but if he fails to comply with the terms of the judgment and the same is not fully satisfied, and refuses to surrender the possession of the demised premises at the expiration of said year, the landlord shall be entitled to a writ of assistance or execution to be issued and executed as provided by law.

**704.40 Remedies available when tenancy dependent upon life of another terminates.**

(1) Any person occupying premises as tenant of the owner of a life estate or any person owning an estate for the life of another, upon cessation of the measuring life, is liable to the owner of the reversion or remainder for the reasonable rental value of the premises for any period the occupant remains in possession after termination of

the life estate. Rental value as used in this section has the same meaning as rental value defined in s. 704.27.

(2) The owner of the reversion or remainder can remove the occupant in any lawful manner including eviction proceedings under ch. 299 as follows:

(a) If the occupant has no lease for a term, upon terminating his tenancy by giving notice as provided in s. 704.19;

(b) If the occupant is in possession under a lease for a term, upon termination of the lease or one year after written notice to the occupant given in the manner provided by s. 704.21 whichever occurs first, except that a farm tenancy can be terminated only at the end of a rental year.

(3) The occupant must promptly after written demand give information as to the nature of his possession. If he fails to do so, the reversioner or remainderman may treat the occupant as a tenant from month-to-month.