

Landlord–Tenant Law: What You Should Know About Act 176

The 2015 Wisconsin Act 176 ("Act 176") became effective on March 2, 2016. Act 176 amends numerous statutes covering various real estate-related topics; however, this e-alert focuses on the changes impacting landlord-tenant law.

Criminal Activity

The first change relates to criminal activity occurring at a rental property. A landlord may now terminate a lease due to criminal activity, including drug-related criminal activity, at a rental unit occurring after March 2, 2016, by serving the tenant with a noncurable 5-day notice. This applies regardless of the lease term and covers criminal activity conducted by the tenant, members of the tenant's household, and guests or invitees of the tenant/members of the tenant's household. It is important to note, however, that the definition of "criminal activity" does not include use or possession of drugs.

To be effective, the noncurable 5-day notice for criminal activity must include:

1. a description of the criminal activity;
2. the date on which the criminal activity occurred;
3. the identity or description of the person(s) engaged in the criminal activity;
4. notice that the tenant may seek assistance of legal counsel, volunteer legal clinic or a tenant resource center; and
5. notice that the tenant may contest the allegations of criminal activity before a court commissioner or judge if eviction actions are filed.

Finally, although it is not necessary that the individual(s) committing the criminal activity be arrested for or convicted of the alleged criminal activity, if the tenant contests the termination of the tenancy, the tenancy cannot be terminated unless the landlord provides proof "by the greater preponderance of the credible evidence" of the criminal activity.

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Notices for Nonrent Breaches

Act 176 allows the landlord of a month-to-month tenancy to serve a tenant engaging in a nonrent lease breach with a 5-day notice with a right to cure or a 14-day notice terminating the tenancy. The only option available under the old law was for the landlord to serve a 14-day notice to terminate the tenancy. In reality, this meant that many landlords chose to overlook lease breaches rather than terminate the tenancy. Under Act 176, a landlord may now serve a month-to-month tenant with a notice advising them of the breach and giving them a right to cure before resorting to termination.

Additionally, Act 176 removes the requirement that a landlord serve a 14-day notice for a nonrent breach prior to the tenant remedying the breach, so a landlord may now serve a 14-day notice terminating tenancy after a nonrent breach has occurred (even if the tenant has remedied the breach).

Limitations on Local Government

Another change under Act 176 limits the power of local governments over landlords in several ways. First, Act 176 prohibits the inspection of a rental property unless a criminal complaint has been made about the property or the inspection is part of regularly scheduled inspections conducted in compliance with state and federal laws. Act 176 also prohibits local governments from enacting rental licensing ordinances unless such ordinances apply to all residential rental property owners, including owners of owner-occupied rental property. Additionally, Act 176 limits rental unit inspection fees charged by local governments, and includes a provision that subsequent reinspection fees cannot be more than twice the fee charged for an initial reinspection. Act 176 also prohibits local governments from imposing an occupancy or transfer of tenancy fee on a rental unit.

Trespassing

Finally, Act 176 includes several trespassing-related provisions relating to landlord-tenant law. Under Act 176, the definition of "trespasser" means a nontenant who enters or remains in a residential rental property without the landlord's or tenant's consent. Act 176 makes it a Class A misdemeanor for anyone to intentionally enter or remain in another's dwelling without the consent of a person lawfully upon the premises or, if no one is lawfully upon the premises,



without the owner's consent, under circumstances "tending to create or provoke a breach of the peace."

Act 176 also requires law enforcement agencies to have a written policy for investigating trespassing complaints and such policies must require the removal of a person from a dwelling if a law enforcement officer has probable cause to arrest said person for trespassing.

If a trespasser is removed from a residential rental property and leaves behind personal property, the landlord must hold such personal property for at least 7 days from the date of discovery. After 7 days, the landlord may presume the property to be abandoned and dispose of it in any manner deemed appropriate by the landlord. If the trespasser requests return of the property either within seven days or before disposal, however, the landlord must promptly restore the property to the trespasser.

If you have questions about Act 176 or other landlord-tenant concerns, please contact your Reinhart attorney or any member of the Reinhart Real Estate Team.

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