

# MVLC Brown Bag CLE

## "Just Withhold the Rent" A Rent Abatement How-To

April 12, 2018

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# Community Advocates

- For assistance with abatement, you can contact Community Advocates
- Located at 728 N. Lovell St., Milwaukee, WI
- Or Call Jeremy Jones at 414.270.2951



COMMUNITY ADVOCATES  
Where Meeting Basic Needs Inspires Hope

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### Where is the Tenant in the Process?

- Wanting Repairs?
- Eviction Notice Pending?
- Eviction Notice Expired?
- Small Claims Complaint Pending?



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### If Abatement Is Possible

- Have tenant contact the building inspector (DNS)
- Community Advocates will schedule home visit and notify LL of possible abatement



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### If Abatement Is Not Possible

- Discuss relocation
- Pursue mediation
  - Mediate Milwaukee offers free landlord-tenant mediation in the courthouse on Wednesday afternoons
  - Contact Amy Koltz at 414.939.8800



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## Abatement

- If no repairs are made after LL has been notified of possible abatement, tenant should notify LL that rent is being abated and that rent will not be paid in full
- Community Advocates Form Letter

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## Potential Responses from LL

- No action
  - If landlord fails to correct condition, tenant continues abating rent
- Repairs are made
  - After repairs are completed, tenant should resume paying rent in full
- Landlord serves eviction notice
  - Tenant should be apprised of legal options



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**EVICTED DEFENSE PROJECT**

a program of Legal Action of Wisconsin

- Located in the Milwaukee County Courthouse
- Room 406 (in the hallway leading to Room 409) on the fourth floor of the courthouse
- Open 12:00pm-3:00pm
- Volunteer attorneys provide free civil legal aid to tenants facing eviction in a limited scope representation

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## Eviction Actions

Small Claim Eviction Action are divided into 3 Causes

- 1<sup>st</sup> Cause – Eviction, can the tenant remain in the property
- 2<sup>nd</sup> and 3<sup>rd</sup> Causes – Monetary Claims



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## Abatement as a Defense

- Abatement is addressed in Wis. Stat. 704.07 which addresses repairs and untenantability
- Removal → 704.07(4) provides that if a tenant may leave a property if
  - there is a substantial violation materially affecting the health or safety of the tenant and the landlord does not promptly address the condition or
  - the inconvenience of repair would impose undue hardship on the tenant
- Abatement → "If the tenant remains in possession and the condition materially affects the health or safety of the tenant or substantially affects the use and occupancy of the premises, rent abates to the extent the tenant is deprived of the full normal use of the premises." Wis. Stat. 704.07(4) (underlined provision to be added to statute under recently passed bill).

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## Abatement as a Defense

- What does this mean?
  - Tenants can reduce the amount they pay for rent in order to compensate for certain issues (e.g., health and safety)
  - Self-help remedy
  - However, recommend working with Community Advocates and the Department of Neighborhood Services to ensure proper documentation and handling of the abatement
- Abatement is a defense to an eviction action → If a tenant has abated correctly, an eviction action based solely on rent that was not paid due to abatement should fail.
- Abatement can occur in concert with rent withholding through DNS



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### Legal Pitfalls to Abatement – Cannot Abate All Rent

- Wis. Stat. 704.07(4) explicitly "does not authorize rent to be withheld in full."
  - Cannot abate 100% of rent
  - Full abatement will undercut retaliation claims as well
- Most common problem with abatement defense at EDP

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### Legal Pitfalls to Abatement – Abatement Must Be Reasonable



- No guidance on whether abatement is reasonable
- Abating runs the risk of being deemed unreasonable by a court, which would then open a tenant up to eviction

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### Legal Pitfalls to Abatement – Best Practice is to Notify LL

- Courts have held that notice is required to the landlord, although the exact form of required notice is unspecified
- Ideal notice would be:
  - In advance,
  - In writing, and
  - communicate the specific amount abated and the corresponding conditions justifying the abatement



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## Small Claims Court – 2<sup>nd</sup> and 3<sup>rd</sup> Cause Hearing

- Located in Room 400 of the Milwaukee County Courthouse
- 2<sup>nd</sup> and 3<sup>rd</sup> Cause Hearings typically set for 2:30pm



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## 2<sup>nd</sup> and 3<sup>rd</sup> Cause Evidentiary Hearing

- The Plaintiff (Landlord) has the Burden of Proof in establishing what monetary damages are the tenant's responsibility.
- The 2<sup>nd</sup> cause of action is what rent is still owed to the Plaintiff;
- The 3<sup>rd</sup> cause of action is, whether or not there are other damages to the property and if so, is the tenant responsible and what are the costs?



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## Rent Abatement as an "Offset"

- After an Evidentiary hearing the Judicial Officer will determine, based on the evidence, whether or not abatement is warranted.
- If so, the Judicial Officer will factor the abatement into the dollar amount of damages awarded to the Plaintiff and/or to the tenant if a counterclaim was filed.



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## Types of Evidence Presented



- Photos of the property before and after a tenant moved in and out
- Receipts/Invoices relating to the fixing up of the property
- Receipts related to not being able to fully use the property (ie: no heat; receipt for motel bill)
- Lease and Non Standard Rental Provisions
- Communication between the parties (text messages and written communication)

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