



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

May 13, 2013

VIA EMAIL AND U.S. MAIL

John Greene
Director, Consumer Protection and Antitrust Unit
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Dear John:

Re: Request for Opinion – Landlord and Tenant

I am writing, on behalf of the Department of Agriculture, Trade and Consumer Protection (DATCP), to request an informal opinion from the Department of Justice (DOJ) concerning the interpretation of Wis. Stat. § 704.07. Specifically, as explained below, we are requesting DOJ to review the informal opinion included in the attached March 15, 2001, regarding whether a clause in a residential agreement that requires the tenant to pay for the cost of cleaning a carpet upon the termination of the tenancy, regardless of whether the carpet has been damaged by the tenant's willful or negligent use, is void and unenforceable pursuant to Wis. Stat. § 704.44(8), and determine whether that opinion should be withdrawn or revised.

DATCP administers various trade practice and consumer protection laws, including Wis. Stat. § 100.20. Under § 100.20(2), DATCP has adopted Wis. Admin. Code ch. ATCP 134, which regulates residential rental practices. The department originally adopted this rule in 1980 and revised it in part in 1999. Under Wis. Admin. Code § ATCP 134.08(7), no rental agreement may "[W]aive any statutory or other legal obligation on the part of the landlord to...maintain the premises during tenancy."

DATCP has become aware that, for many years, some Wisconsin residential rental agreements have contained a clause requiring a tenant to pay for the cost of cleaning the carpet upon termination of the tenancy regardless of whether the tenant has damaged the carpet due to willful or negligent use. One recent example of such a clause is as follows:

CARPET CLEANING: *Payment for professional (truck-mounted) carpet cleaning is the responsibility of the tenant(s). Carpet cleaning must be completed by noon on the day of move-out. This amount must be paid by check, payable directly to the carpet cleaning company, prior to move-out.*

Wis. Stat. § 704.07 describes, among other things, the respective duties of landlords and tenants as they may apply to repairs of the premises. Since our department does not administer Wis. Stat. ch.

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704, it has in past years turned to the Department of Justice for an interpretation of Wis. Stat. § 704.07(2) when considering whether a carpet cleaning agreement as described above violates Wis. Admin. Code § ATCP 134.08(7).

In 2001, when considering a proposed rule change to Wis. Admin. Code ch. ATCP 134 to allow landlords to negotiate carpet cleaning agreements, the department asked DOJ: “[W]ould a carpet cleaning agreement making the tenant responsible for such maintenance in absence of negligence or improper use be void under Wis. Stat. § 704.07(1) at the present time?” DOJ responded with an informal opinion letter dated March 15, 2001 (*attached*), which states that “[R]outine carpet cleaning at the end of a tenancy falls within the landlord’s duties as assigned by Wis. Stat. § 704.07(2).”

Based in part on this letter, the department has heretofore interpreted Wis. Admin. Code § ATCP 134.08(7) to prohibit a carpet cleaning agreement that waives the landlord’s duty to provide routine carpet cleaning at the end of the lease in the absence of negligence or improper use by the tenant.

The legislature has enacted 2011 Wisconsin Act 143 effective March 31, 2011. Among other things, the Act creates Wis. Stat. § 704.44(8) which repeats the prohibition against a residential rental agreement that “[W]aives any statutory or other legal obligation on the part of the landlord to...maintain the premises during the tenant’s tenancy.” Under Wis. Stat. § 704.44, a residential rental agreement is void if it contains a clause prohibited by that section.

Wisconsin courts have not directly addressed the issue of whether routine carpet cleaning, in absence of negligence or improper use, is a duty of the landlord. Courts have, however, held as follows:

- The landlord is responsible for the cost of replacing a door where the landlord presented no evidence that the replacement was due to anything other than normal wear and tear.
- The landlord has the duty to repair or replace kitchen appliances that were not in reasonable working condition. Boelter v. Tschantz, (App. 2009) 323 Wis. 2d 208, 779 N.W.2d 467.
- The landlord is responsible for the damages to the rented premises caused by a fire started by a defective hair dryer where the fire was not caused by the tenant’s negligent or improper use. Maryland Arms Ltd. Partnership v. Connell, (App. 2009) 769 N.W.2d 145, 320 Wis.2d 147, review granted 775 N.W. 2d 531, 321 Wis. 2d 570, affirmed on other grounds 786 N.W. 2d 15, 326 Wis. 2d 300.
- The legislature’s intent when enacting Wis. Stat. § 704.07 was to alter the common law rule to make the landlord and tenant more evenly share the duties of repair. Raymaker v. American Family Mut. Ins. Co. (App. 2006) 718 N.W.2d 154, 293 N.W. 2d 392, review denied 724 N.W. 2d 204, 297 Wis. 2d 320.

Our department’s further review of the carpet cleaning issue, which has included discussions with DOJ representatives, has raised questions about whether the informal opinion should remain in effect.

DATCP therefore is requesting DOJ to review the following questions to determine the current status of the March 15, 2001, informal opinion.

1. Based on current law, does routine carpet cleaning at the end of a tenancy fall within the landlord's duty as assigned by Wis. Stat. § 704.07(2)?
2. Would a carpet cleaning agreement making a tenant responsible for such maintenance in absence of negligence or improper use be void under Wis. Stat. § 704.44(8)?

We appreciate your assistance in resolving these questions. If you have any questions, feel free to contact me or Assistant Counsel David Ghilardi (224-5030).

Sincerely,



David V. Meany
Chief Legal Counsel
608-224-5022

cc: Secretary Ben Brancel
Sandy Chalmers
Michelle Reinen
David Ghilardi
Kevin Potter