



KENOSHA POLICE DEPARTMENT

POLICY AND PROCEDURE

41.13 Criminal Trespassing / Civil Matters

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I. PURPOSE

It is the purpose of this policy to establish uniform procedures for the handling criminal trespass to dwelling complaints.

II. POLICY

Officers that respond to calls for trespassing complaints should prevent breaches of peace and take enforcement action on applicable criminal laws and ordinances, when necessary, or direct the involved parties to the appropriate agency/resources when appropriate. Section 175.403 Wis. Stat. does not apply to persons who already share a landlord/tenant relationship. Landlord/tenants that have already begun the eviction process should be advised to complete that process. This policy does not replace or negate the eviction process.

III. DEFINITIONS

- A. Dwelling – a structure or part of a structure that is used or intended to be used as a home or residence by one or more persons to the exclusion of all others, regardless of whether the dwelling is currently occupied by a resident. Wis. Stats 943.14(1)
- B. Tenancy – There are a number of ways, under Wisconsin law, for a person to be a tenant. Some tenants sign a lease, which is a contract between the landlord and tenant that has a fixed start and end date. This can also be called a “rental agreement”. Sec. 704.01(1), (3m) and (4) Wis. Stats. A lease or rental agreement can be oral or written.
- C. Periodic tenants are individuals who hold possession of a property without a valid lease, and who pay rent on a periodic basis. The period can be day-to-day, week-to-week, month-to-month, year-to-year, or any other recurring interval of time. The period is determined by the intent of the parties under the circumstances, and the payment of rent normally shows that intent. Sec. 704.01 (2) Wis. Stats.
- D. A “tenant at will” means any tenant holding the property with permission of the tenant’s landlord without a valid lease and under circumstances not involving periodic payment of rent. Sec 704.01 (5) Wis. Stats.

IV. APPLICABLE LAWS AND ORDINANCES

- A. Wis. Stat. 175.403(2); Each law enforcement agency shall have a written policy regarding the investigation of complaints alleging a violation of Wis. Stat. 943.14(2). The policy shall require a law enforcement officer who has probable cause to arrest a person for a violation of Wis. Stat. 943.14 to remove the person from the dwelling.

43.2 Tavern Violations

- B. Wis. Stat. 943.14(2); Whoever intentionally enters or remains in the dwelling of another without the consent of some person lawfully upon the premises or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class A misdemeanor.

V. CRIMINAL MATTERS

- A. Officers should refer to Wis. Stat. 943.14(2) when investigating reports of Criminal Trespass to Dwellings. Under this statute, the complainant is not required to be on the premise when the trespass occurs.
- B. If Officers establish probable cause to arrest a person for criminal trespass, they shall remove the person(s) from the dwelling for violation of Wis. Stat. 943.14(2), whether or not an arrest is made.
 - 1. If an officer is sent to investigate a violation of Sec. 943.14 (criminal trespass) and, based on his or her investigation, establishes probable cause that the person present (1) is not a tenant, (2) entered a premises or remains on a premises without consent of a tenant or landlord, and (3) that entry into or remaining is tending to create or provoke a breach of the peace, the officer shall remove the person from the premises.
 - 2. Officers may arrest any person for violation of Wis. Stat. 943.14(2) who is unwilling to leave the dwelling and/or in circumstances in which any use of force was required to remove the person from the dwelling.
 - 3. Officers shall document the removal of any person who is not a tenant, from a dwelling; whether or not an arrest is made if physical force is used by the officer(s).