



**MIDDLETON POLICE  
DEPARTMENT**

DATE  
**March 15, 2016**

POLICY  
**6.1.11**

SUBJECT: **Trespass To Dwelling**

REVIEWED  
July 8, 2019

Refer to: [Wisconsin Legislature: 943.14](#)

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**PURPOSE**

The purpose of this policy is to establish procedures for members of the Middleton Police Department when investigating alleged complaints of criminal trespass to dwelling.

**POLICY**

Pursuant to ss. 175.403, it shall be the policy of the Middleton Police Department that if an officer has probable cause to arrest a subject for a violation of ss. 943.14, that minimally the subject shall be removed from the dwelling.

In most instances, an arrest should be made if probable cause exists, which may include a criminal referral or physical arrest.

**DEFINITIONS**

**Criminal trespass to dwelling ss. 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 peace.

**Dwelling unit ss. 943.14(1)** - A structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

**Lease** - A 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. An agreement for transfer of possession of only personal property is not a lease.

**Periodic Tenant** – 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.

**Premises** – Premises means the property covered by the lease, including not only the reality and fixtures, but also any personal property furnished with the reality.

**Tenancy** – Includes a tenancy under a lease, a periodic tenancy or a tenancy at will.

## **PROCEDURE**

### **Determining Tenancy**

1. As an initial matter, the officer must establish that person alleged to be committing the violation is not a tenant who has a legal right to remain on the property. Steps to help determine this are as follows:
  - a. Determine legal background
    1. Under Wisconsin law, the absence of the person's name on a written rental agreement does not establish that the person is not a tenant.
    2. A tenancy may be created by verbal agreement between the landlord and the tenant. Wis. Stat. § [704.01\(3m\)](#). Like other forms of tenancy, a tenancy established under a verbal rental agreement may only be terminated with proper notice and through the civil eviction process. Therefore, a person who is a tenant and who has not been evicted by the sheriff through the civil eviction process is not trespassing.
    3. Further, a tenancy at will is created when a person resides in a dwelling “with permission of the tenant's landlord without a valid lease and under circumstances not involving the periodic payment of rent.” Wis. Stat. § [704.01\(5\)](#). Therefore, someone may be a tenant, even if the person does not pay rent on a regular basis. Once a tenancy at will is established it may only be terminated with proper notice and through the civil eviction process. Therefore, a person who is a tenant at will and not evicted by the sheriff through the civil eviction process is not trespassing.

## **Investigations:**

1. In order to establish probable cause that a person is not a tenant, an officer must do all of the following:
  - a. Establish probable cause that no written or verbal lease agreement existed between the person and landlord nor between the person and any agent of the landlord.
  - b. Ordinarily, this would require interviewing the landlord, the landlord's agents, the alleged trespasser and any other individuals, such as other residents, who may have knowledge as to the existence of a written or verbal rental agreement.
  - c. Reviewing any written lease agreements may be helpful, but the existence or absences of a written agreement does not establish that a separate verbal agreement did not exist.
  
2. Establish probable cause that the person is a not a tenant at will.
  - a. A tenancy at will exists whenever the person resided at the dwelling with the permission of the landlord. The existence or absence of a written rental agreement is generally not relevant to whether or not the person is a tenant at will. To establish the existence or absence of permission, in addition to interviewing relevant individuals, the officer shall investigate all of the following:
    - i. Determine whether the person lived at the dwelling for a length of time as evidenced by:
      1. The presence of the person's belongings, such as clothes, appliances and other possessions; or,
      2. Whether or not the address of the dwelling is listed on the person's mail, ID or other documents.
      3. Whether the landlord or landlord's agent knew of the person's presence at the dwelling and agreed to the person's presence or did not object to the person's presence, as evidenced by:
        - a. Whether or not the landlord or landlord's agent had occasion to learn of the person's presence during maintenance or other visits to the property;
        - b. Whether or not the landlord or landlord's agent accepted rent from the person; or,
        - c. Other relevant information.
  
3. Determine if the person may be a guest

- a. Did the person intentionally enter or remain in the dwelling of another without the permission of a person lawfully present. For persons who the officer has established probable cause to believe are NOT tenants, the officer must proceed to consider whether there is probable cause to believe the person intentionally entered or remained in the dwelling without the consent of some person lawfully upon the premises.
  - b. Or, if no person is lawfully upon the premises, did the person intentionally enter or remain in the dwelling of another without the consent of the owner of the property that includes the dwelling. For persons who the officer has established probable cause to believe are NOT tenants, and when no person is lawfully upon the premises, the officer must proceed to consider whether there is probable cause to believe the person intentionally entered or remained in the dwelling without the consent of the owner of the property that includes the dwelling.
4. Determining a breach of peace
- a. Criminal trespass under Wis. Stat. § [943.14](#) requires more than non-consensually entering or remaining on the dwelling. The person must enter or remain under circumstances that tend to create or provoke a breach of the peace.
    1. Landlord-tenant situations which are typically peaceably resolved by the civil legal process are not circumstances that tend to create or provoke a breach of the peace.
  - b. Because creating or provoking a breach of the peace is an element of criminal trespass, it is the policy of this department not to arrest persons in landlord-tenant situations when the person did not enter or remain in the dwelling under circumstances that tend to create or provoke a breach of the peace.

### **Arrest**

1. If an officer is sent to investigate a violation of § [943.14](#) (criminal trespass) and, based on his or her investigation, establishes probable cause that the person present is not a tenant, entered a premises or remains on a premises without consent of a tenant or landlord, and that entry or remaining is tending to create or provoke a breach of the peace, the officer shall remove the person from the premises and shall normally either issue a summons or place the person under physical arrest.

### **Written Documentation**

1. In all cases of a criminal trespass complaint, the investigating officer shall document the incident in a written report.