**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**June 19, 2007**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal No. 2006AP3162** **Cir. Ct. No. 2006SC23259**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

**GREENFIELD SENIOR HOUSING V, LLC,**

**PLAINTIFF-RESPONDENT,**

**V.**

**THOMAS M. TANNEHILL,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Reversed and cause remanded for further proceedings consistent with this opinion.*

¶1 CURLEY, J.[1] Thomas M. Tannehill appeals the small claims judgment evicting him from an apartment he leased from Greenfield Senior

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06).

Housing V, LLC (Greenfield). He submits that the trial court erred in interpreting WIS. STAT. § 704.17(2)(b) (2005-06)[2] as not requiring that the tenant be offered an opportunity to remedy the breach. He also argues that the trial court's findings support his contention that, in fact, he did remedy the situation. This court agrees that the trial court erred in interpreting § 704.17(2)(b) as not requiring a tenant the opportunity to remedy a breach of a lease, and that the trial court's findings support Tannehill's contention that he remedied the situation. Consequently, the eviction judgment is reversed and this matter is remanded for further proceedings consistent with this opinion.

## I. BACKGROUND.

¶2 Tannehill is deaf and lives in a housing complex serving both the deaf community and senior citizens. He had a one-year lease with Greenfield that was signed in March 2006. On June 23, 2006, he was in line waiting to board a bus that was taking residents of the housing project to Polish Fest. According to his testimony, when he alighted the bus he stopped to tell the bus driver that a person with a walker was waiting to get on the bus. During this conversation, he felt someone pushing him from behind. He turned and saw another deaf resident, Janice Prell, behind him. He told her to stop pushing him. She exited the bus and told others that Tannehill was angry at her.[3] Eventually she boarded the bus and sat in the front of the bus where she proceeded to "sign" to the person next to her that Tannehill was an "asshole." Seeing Prell sign the profanity, Tannehill came

[2] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[3] Prell and Tannehill communicate with others by using sign language.

up behind her and slapped the back of her head. Prell later recounted that the slap resulted in her glasses flying off her head and caused her pain. Nevertheless, she continued on the trip, and when the bus returned approximately four hours later, she called the police. She related the events concerning Tannehill's behavior towards her. However, unlike her testimony at trial, Prell never told the police that she called Tannehill an "asshole" prior to his slapping her head. Prell requested that the police call an ambulance for her. She was seen at West Allis Memorial Hospital and referred to a doctor.

¶3 As a result of Prell's complaint, the police gave Tannehill a municipal citation for battery. Several days later, Greenfield served Tannehill with a termination notice entitled "FIVE DAY NOTICE TO REMEDY DEFAULT OR VACATE PREMISES." Greenfield subsequently commenced an eviction action. The complaint stated:

> Defendant breached the terms of the lease by his actions on June 23, 2006, in that they were a substantial violation of the lease (see Section II, (L)(3) of the lease). Defendant's conduct "unduly disturb[ed] neighbors or other Tenants" contrary to Section II(G) [sic] (5) of the lease. Defendant engaged in unlawful activity (battery) contrary to paragraph 5 of the Water Tower View Rules and Regulations (part of Attachment 1 hereto). His actions "interfer[ed] with the rights, comforts or conveniences of other tenants." (Id. at paragraph 5).

The referenced Section II (L)(3), in pertinent part, reads:

> Subject to the following provisions, Landlord may make such reasonable rules governing the premises and the building of which they are part as Landlord deems necessary. Tenant agrees to observe and comply with all such rules and any violation of the rules shall be deemed a breach of this Lease[].

There is no Section II (G)(5) of the lease, but presumably the complaint is referring to Section II (F)(5), which states: "Tenant shall not make excessive noise or engage in activities which unduly disturb neighbors or other Tenants in the building which the premises are located."

¶4 Finally, paragraph five of the Water Tower View Rules and Regulations, referenced in the complaint, instructs that: "All residents agree not to engage in or permit unlawful activities. This includes under age drinking and illegal drug related activities in the apartment, hallways, common areas or grounds."

¶5 The five-day notice was attached to Greenfield's eviction complaint. Checked is a preprinted sentence which states: "Remedy the following defaults (describe default(s) in detail and specify exactly what actions the Tenant must take)." Handwritten is the following:

> Tenant obligation #5: "Tenant shall not make excess noise or engage in activities which unduly disturb neighbors or other tenants in the building which the premises are located." On 6/23/06, you assaulted a female Water[ T]ower[ V]iew resident following a dispute boarding the special event bus at Water [T]ower[ V]iew and physical force was used. No future contact with victim is allowed.

¶6 Tannehill answered the eviction complaint and challenged Greenfield's claim that he failed to remedy the situation.[4] A trial on the eviction

[4] Following Tannehill's refusal to vacate and contesting the eviction, Greenfield served Tannehill with an amended small claims eviction complaint in which it alleged that, on August 30, 2006, Greenfield had personally served him with a thirty-day notice to vacate the premises. The amended eviction complaint claimed that Tannehill had failed to pay his rent because his housing assistance payments to the owner of the building were terminated by the Public Housing Authority. Tannehill moved to dismiss the amended complaint as being untimely. Greenfield agreed and the amended complaint was dismissed.

was held on November 14, 2006, and December 15, 2006. At the close of the trial, the trial court made findings essentially in accord with Prell's testimony that she never touched Tannehill and originally he began yelling at her for no reason. However, the trial court found that she did call him an "asshole," resulting in Tannehill's striking her, and she suffered an injury as a result of the slap. The trial court also determined that it was impossible for Tannehill to remedy the situation because it was a quasi-criminal act, and that the statute did not require that Tannehill be given the opportunity to correct the breach. The trial court did, however, stay the writ of assistance and Tannehill filed an undertaking pursuant to WIS. STAT. § 799.445 which was signed by the trial court, and the matter was stayed while on appeal.

## II. ANALYSIS.

¶7 This case requires this court to interpret WIS. STAT. § 704.17(2)(b). The interpretation of a statute presents a question of law, which we review *de novo*. ***State v. Williams***, 198 Wis. 2d 516, 525, 544 N.W.2d 406 (1996).

¶8 Tannehill first challenges the trial court's determination that no remedy was possible for the alleged breach of his lease. Next, he argues that since his eviction action was commenced using the procedure set forth in WIS. STAT. § 704.17(2)(b), he was entitled to try to remedy the claimed breach before he could be evicted. Finally, he insists that the actions he took, which tracked the suggested remedy found in Greenfield's five-day notice, remedied the situation. This court agrees with all three contentions.

¶9 Chapter 704 of the Wisconsin Statutes is entitled "LANDLORD AND TENANT." WISCONSIN STAT. § 704.17(2)(b) dictates the procedure to be used for commencing an eviction action against a person having a year-to-year lease such

as Tannehill's. Section 704.17(2)(b) requires the landlord to give the tenant "a notice requiring the tenant to remedy the default or vacate the premises." Greenfield elected to serve a five-day notice under this provision that advised Tannehill of the breach and also set forth an action plan on how Tannehill could rectify the breach; that is, he was to have no future contact with the victim. Nowhere in the statute does it state or infer that the advisals contained in the statute that a tenant be given a notice to remedy is optional or that some breaches are impossible to remedy. Indeed, to the contrary, § 704.17(2)(b) goes on to advise that a "tenant is deemed to be complying with the notice if promptly upon receipt of such notice the tenant takes reasonable steps to remedy the default and proceeds with reasonable diligence."

¶10 Here, the trial court found that a breach of the lease occurred, but then found that the breach is "not the type of an act that can be cured by good behavior after the fact." Later, the trial court followed up on this comment, stating: "I don't find a real ability to cure from something like this because of the nature of what he did." The trial court cited no case law to support these conclusions. In reaching these conclusions, the trial court ignored the procedure set out in the statute and ignored the fact that Greenfield stated in its five-day notice that Tannehill could remedy the breach by having no future contact with Prell.

¶11 WISCONSIN STAT. § 704.17(2)(b) requires that the tenant be given a chance to "remedy" the breach, and under the trial court's ruling, Tannehill was not given that chance. Additional support for the fact that a tenant must be given an opportunity to remedy the breach when using the statutory procedure found in § 704.17(2)(b) comes from a reading of the other provisions of the statute. Section

704.17(2)(c), pertaining to leases for a term of one year or less, or a tenant who is a year-to-year tenant permits the property owner to:

> terminate the tenancy of a tenant … if the property owner receives written notice from a law enforcement agency … or from the office of the district attorney, that a nuisance … exists in that tenant's rental unit or was caused by that tenant on the property owner's property and if the property owner gives the tenant written notice requiring the tenant to vacate on or before a date at least 5 days after the giving of the notice.

Certainly, had the legislature meant that § 704.17(2)(b), despite its wording, permitted a total disregard of the requirement that the tenant be allowed to remedy the breach, the statute could have been written in a fashion similar to § 704.17(2)(c), where only notice is required before a tenant can be forced to vacate. It was not so written. The trial court's interpretation of the statute that the requirement of a remedy for the breach has no legal significance and can be disregarded, renders the language regarding the remedy surplusage. Statutes "should be construed so that no word or clause shall be rendered surplusage and every word if possible, should be given effect." ***Donaldson v. State***, 93 Wis. 2d 306, 315, 286 N.W.2d 817 (1980). Thus, the trial court erred in its interpretation. Section 704.17(2)(b) requires the landlord to permit the tenant to remedy the breach, and the trial court is not free to conclude no remedy is possible.

¶12 Having so concluded, this court next examines whether the trial court's findings concerning the action taken by Tannehill constituted a remedy for the breach. In its findings, the court said:

> I think it's clear based upon the testimony of Dolores Tannehill, Mr. Tannehill, what we know of the medication being altered, and what seems to be the unrebutted conclusions of Ms. Comp, of Ms. Leiterman, even of Ms. Prell that Mr. Tannehill has not engaged in any such

> behavior since then and Mr. Tannehill has been somewhat reclusive, tried to behave properly.
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> ….
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> … It does show remorse, it shows a remorseful individual who's attempting to change his behavior and, in fact, has changed his behavior, but that doesn't undo the fact that a quasi[-]criminal act was done.
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> ….
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> … I'm satisfied by the weight of the testimony here, the credible testimony that Mr. Tannehill as far as I understand behaved properly or largely properly since this incident all the way up until now. I also note that in these circumstances there appears to be a minimization of contact between Ms. Prell and Mr. Tannehill, which is a good thing given the ongoing circumstances between the two.

¶13 These findings support Tannehill's contention that he remedied the breach. All the witnesses who were in a position to observe Tannehill's conduct after the incident noted that he had been avoiding Prell and had become reclusive. There was also testimony that Tannehill was fearful of running into Prell and that both Tannehill and Prell attempted to avoid each other. Further, Tannehill's mother testified that, at the time of the incident, Tannehill was taking medication following a stroke and a heart attack, a side effect of which was aggression. She also testified that the medication had subsequently been changed and that there had been an improvement in his mood. Thus, there is ample evidence in the record to support the trial court's suggestion that Tannehill cured the breach by his behavior. But for the trial court's erroneous belief that a remedy was not possible given the nature of the breach, the trial court's findings support a conclusion that Tannehill remedied the breach by avoiding contact with Prell. As a result, the judgment of eviction is reversed and this matter is remanded to the trial court for further proceedings consistent with this opinion.

*By the Court.*—Judgment reversed and cause remanded for further proceedings consistent with this opinion.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.