COURT OF APPEALS
DECISION
DATED AND FILED

August 14, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-3404 **Cir. Ct. No. 01-SC-2915**

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

DEBRA A. MAKI

PLAINTIFF-RESPONDENT,

V.

KATHLEEN W. ALLEN AND RANDOLPH S. ALLEN,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed*.

¶1 BROWN, J.[1] Kathleen W. Allen and her husband, Randolph S. Allen, arguing pro se, appeal a small claims judgment of eviction in favor of their landlord, Debra A. Maki. We affirm.

---

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

¶2 The Allens and Maki entered into a one-year lease on a rental unit in Kenosha commencing October 1, 2000, and terminating September 30, 2001. On October 1, 2001, the lease converted to a month-to-month tenancy when the Allens paid Maki rent for that month and Maki accepted payment.

¶3 During the Allens' tenancy, various disputes arose regarding the premises. The Allens made complaints to Maki concerning the condition of the premises, the timeliness of repairs and access to the basement for storage and laundry hook-up. Additionally, the Allens objected to Maki employing a neighbor to make repairs on the premises because of "ungodly" work hours and alleged "peeping" incidents. Ultimately, the Allens filed a complaint with the city housing inspector on or about September 30, 2001. On October 2, 2001, Maki served the Allens with a notice to terminate the tenancy by the end of the month. The Allens refused to move and Maki brought the eviction action from which the Allens appeal.

¶4 The Allens assert that Maki's decision to terminate their lease was a retaliatory eviction and that the trial court erred by finding otherwise. WISCONSIN STAT. § 704.45(1)(a) provides that a landlord may not refuse to renew a lease "if there is a preponderance of the evidence that the action or inaction would not occur but for the landlord's retaliation against the tenant" for making a good faith complaint about the premises to a local housing code enforcement agency. The main dispute between the parties in this case is whether Maki's decision to terminate the month-to-month lease would have occurred but for the Allens' repeated complaints to Maki and to the city housing inspector. This is a dispute of fact and we must therefore apply the clearly erroneous standard of review. *See* ***State v. Turner***, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987).

¶5 The trial court allowed Maki and the Allens to present their positions and determined that Maki had sufficient reason aside from the Allens' complaints not to renew the lease. In particular, the court noted the significant fact that Maki served them with notice just at the end of the tenancy period. The court also considered Maki's statement that she terminated the lease because the Allens seemed unhappy, had disputes with the neighbors and made phone calls to the police. With respect to the Allens' argument that there was no "eviction problem" until the complaint of September 30 to the city housing inspector, the court replied that "the fact that [the complaint and the notice] are in the temporal sequence that they are does not lead unalterably to the conclusion that the eviction was retaliatory." The trial court concluded that the Allens had failed to establish by a preponderance of the evidence that the eviction was retaliatory; we discern no error in its reasoning.

¶6 Nevertheless, the Allens argue that "as long as there is a valid, open complaint existing with a city's housing or building authorities prior to the beginning of eviction proceedings an eviction should not be possible as long as there is no failure to pay rent, no negligence on behalf of the tenant and no criminal activity." The Allens assert that the main purpose of the statute is to "allow tenants to file complaints about housing code violations no matter how minor, to the local housing authorities without fearing homelessness." We agree that the general public policy underlying WIS. STAT. § 704.45(1) is to allow a tenant to report housing code violations without fear of reprisal from the landlord. *See* ***Dickhut v. Norton***, 45 Wis. 2d 389, 397, 173 N.W.2d 297 (1970).[2] However,

[2] WISCONSIN STAT. § 704.45 was created several years after ***Dickhut v. Norton***, 45 Wis. 2d 389, 173 N.W.2d 297 (1970), in Laws of 1981, ch. 286, § 7.

reading § 704.45(1) in the manner the Allens urge would limit the landlord's ability to choose tenants to a far greater degree than that contemplated by the statute. Landlords may choose for any reason, or for no reason at all, not to renew a lease or to terminate a periodic tenancy, as long as the reason is not discriminatory or retaliatory. ***Dickhut***, 45 Wis. 2d at 399; *see also* ***Edwards v. Habib***, 397 F.2d 687, 699 (D.C. Cir. 1968). The effect of the Allens' interpretation is that a landlord may not choose not to renew a lease at the end of a lease term whenever a tenant makes a complaint to a housing code authority. Stated differently, the Allens equate the making of a complaint with an injunction against the landlord. There is no indication in the statute that the legislature intended to grant such broad power to tenants. Indeed, the "but for" test incorporated into the statute expressly negates such an interpretation.

¶7 We conclude that the trial court did not err in its determination that the Allens failed to establish the defense of retaliatory eviction.

By the Court.—Judgment affirmed.

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