

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 16, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP560

Cir. Ct. No. 2010SC21

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JOHN W. TORGERSON,

PLAINTIFF-RESPONDENT,

V.

ANN BIBER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: MICHAEL A. SCHUMACHER, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Ann Biber appeals a judgment and an order evicting her from an apartment owned by John Torgerson. Biber contends the circuit court erred by rejecting her WIS. STAT. § 704.25 defense. We affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶2 In 2006, Biber, who has a chemical sensitivity condition, rented an apartment from Torgerson. Biber persistently, and sometimes forcefully, tried to convince other tenants to avoid activities that would trigger her condition. Torgerson decided not to renew Biber's lease after Biber's aggressive and disruptive conduct caused several tenants to leave. Biber agreed to vacate the premises at the conclusion of her lease on December 31, 2009.

¶3 Biber did not vacate the premises as she promised. Torgerson filed this eviction action on January 5, 2010. Sometime on or after January 1, 2010, Biber mailed Torgerson a check dated January 1, 2010, with a memo line advising, "Jan. Rent." Torgerson deposited the check on January 20.

¶4 Biber asserts Torgerson's acceptance of the check triggered WIS. STAT. § 704.25(2), which governs holdover tenants. Under that statute, a residential landlord may elect to accept a holdover tenant on a month-to-month basis. WIS. STAT. § 704.25(2)(b). The statute specifies the timing of that election:

Acceptance of rent for any period after expiration of a lease or other conduct manifesting the landlord's intent to allow the tenant to remain in possession after the expiration date constitutes an election by the landlord under this section *unless the landlord has already commenced proceedings to remove the tenant.*

WIS. STAT. § 704.25(2)(c) (emphasis added).

¶5 Torgerson undisputedly cashed the check after he commenced this eviction action. Yet Biber contends the date of acceptance under WIS. STAT. § 704.25(2)(c) is the date Torgerson received her rent check, not the date he cashed it. Statutory interpretation presents a question of law. *Seider v. O'Connell*, 2000 WI 76, ¶26, 236 Wis. 2d 211, 612 N.W.2d 659.

¶6 In ascertaining the meaning of undefined terms, “statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole.” *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. Here, the subordinate clause—“or other conduct manifesting the landlord’s intent to allow the tenant to remain in possession”—refines the meaning of the “acceptance of rent” clause. Thus, “acceptance of rent” must be interpreted as requiring some conduct manifesting the landlord’s intent. Mere receipt of rent—especially by mail, where the date or fact of delivery may not be clear—does not manifest the landlord’s intent to take on a holdover tenant. The circuit court properly concluded Torgerson accepted Biber’s rent check when he cashed it.²

¶7 Here, Torgerson did not accept Biber’s rent until more than two weeks after he commenced this eviction action. He pursued the action during the subsequent weeks. Torgerson made clear his intent to terminate Biber’s tenancy through his conduct. Because acceptance occurred after this eviction action was filed, the court properly rejected Biber’s WIS. STAT. § 704.25 defense.

By the Court.—Judgment and order affirmed.

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

² We note Torgerson was legally entitled to rent for the period Biber held over. See WIS. STAT. § 704.25(1).

