COURT OF APPEALS DECISION DATED AND FILED

April 13, 2004

Cornelia G. Clark
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. 03-3198

Cir. Ct. No. 03SC006787

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

ROBERT OWENS, JR.,

PLAINTIFF-APPELLANT,

V.

SHORELINE REAL ESTATE CO., INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed*.

¶1 WEDEMEYER, P.J.[1] Robert Owens, Jr. appeals from a judgment entered after the trial court ruled that the notice to vacate, which Owens provided to his landlord, Shoreline Real Estate Co., Inc., was insufficient to terminate his tenancy. Owens claims the trial court erred in dismissing his complaint, and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2001-02).

argues that because the tenancy was a "month-to-month" tenancy, he was only required by statute to give a twenty-eight-day notice to vacate. He argues that he was not required to give Shoreline a sixty-day notice to vacate, which was a term to which he agreed by signing the rental agreement. Because Owens agreed by written agreement to provide Shoreline with a sixty-day notice before vacating his apartment, this court affirms.

BACKGROUND

¶2 This dispute arises from a landlord-tenant case. Owens was a tenant at 1104 North Marshall Street, #604, Milwaukee, Wisconsin, for three years and three months. Before the tenancy commenced, Owens signed a rental agreement, which required that he provide Shoreline with a sixty-day notice if he intended to vacate the apartment. The rental agreement described the tenancy as a "month-to-month" tenancy. Owens also signed typewritten rental increase forms provided to him by Shoreline on April 20, 2001, and on May 15, 2002. Both of these documents noted the sixty-day notice to vacate requirement. Owens signed both documents agreeing to the sixty-day notice provision.

¶3 On January 2, 2003, Shoreline received a handwritten note from Owens indicating that he intended to vacate his apartment on January 31, 2003. This note provided Shoreline with a thirty-day notice to vacate, rather than the sixty-day notice required by the rental agreement. Shoreline informed Owens that he failed to comply with the sixty-day notice requirement and that if Shoreline was unable to re-rent his apartment, Owens would be responsible for January and February rent. Owens paid his January rent but, after moving out on January 31, 2003, he did not pay his February rent.

¶4 Shoreline informed Owens that it was unable to re-rent his apartment and, therefore, he was responsible for the February rent—$535, a $50 late fee, and $75 for restoring a wall Owens had painted red. Shoreline applied Owens's security deposit to the amounts owed, leaving a balance of $155, which Shoreline contended Owens owed. Owens did not dispute the $75 charge, but argued that the statutes only required him to give a twenty-eight-day notice, which he did. Therefore, he argued Shoreline improperly withheld his security deposit. Owens filed a small claims action seeking the return of his security deposit, double damages pursuant to WIS. STAT. § 100.20, and actual attorney's fees.

¶5 Owens moved for summary judgment requesting the return of his security deposit, double damages, and actual attorney fees. The trial court granted summary judgment in favor of Shoreline based on the written rental agreement, and judgment was entered directing Owens to pay Shoreline $155. Owens now appeals.

DISCUSSION

¶6 Owens contends that the sixty-day notice requirement in the "month-to-month" rental agreement creates ambiguities in light of the statutory rules regarding month-to-month tenancies. He suggests, therefore, that the sixty-day notice should not be enforced and asks this court to reverse the judgment. Shoreline responds that the statutory twenty-eight-day notice did not apply in this case because Owens entered into a different agreement with Shoreline when he signed the original rental agreement and the rental increase forms. The trial court agreed with Shoreline. This court affirms.

¶7 This case is before this court on a motion for summary judgment. Questions of law are properly resolved on summary judgment. ***IBM Credit***

Corp. v. Village of Allouez, 188 Wis. 2d 143, 149, 524 N.W.2d 132 (1994). In reviewing summary judgment determinations, we apply the same standards as the trial court. ***Posyniak v. School Sisters of St. Francis***, 180 Wis. 2d 619, 627, 511 N.W.2d 300 (Ct. App. 1993). A summary judgment motion will be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2). Interpretation of the statutes and the terms of a contract present questions of law, which this court reviews independently. *See* ***Fox v. Catholic Knights Ins. Soc.***, 2003 WI 87, ¶¶18-19, 263 Wis. 2d 207, 665 N.W.2d 181.

¶8 Here, Owens makes two arguments. First, he contends that the statutes only require periodic tenants—here, a monthly tenant—to give a twenty-eight-day notice of intent to vacate. *See* WIS. STAT. § 704.19(3). Although this court does not disagree with the general statutory rule, that rule does not control this case because Owens agreed, in writing, to a sixty-day notice to vacate. WISCONSIN STAT. § 704.19(2)(a)1 specifically allows a landlord and tenant to agree to terms different from the rules set forth within WIS. STAT. § 704.19:

> REQUIREMENT OF NOTICE. (a) A periodic tenancy or a tenancy at will can be terminated by either the landlord or the tenant only by giving to the other party written notice complying with this section, unless any of the following conditions is met:
>
> 1. The parties have agreed expressly upon another method of termination and the parties' agreement is established by clear and convincing proof.

¶9 Here, the lease agreement and the two subsequent rental increase notices demonstrate that Shoreline and Owens expressly agreed that Owens would

have to provide a sixty-day written notice in order to terminate the tenancy. Owens agreed to those terms. He is bound by such agreement.

¶10 Owens's second argument is that the circumstances in this case raise ambiguities as to the terms of the agreement and should be construed against the drafter of the written agreements—Shoreline. He argues that the sixty-day notice requirement is inconsistent with the description of his tenancy as a "month-to-month" tenancy. He contends that the tenancy either is a "month-to-month" tenancy or, based on the sixty-day notice provision, a "two month-to-two month" tenancy. Although this court finds Owens's argument in this respect interesting, it does not change the fact that he clearly agreed to provide Shoreline with a sixty-day notice to vacate in spite of the fact that he was a month-to-month tenant. Accordingly, this court rejects Owens's request for reversal of the judgment.

By the Court.—Judgment affirmed.

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