

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 31, 2007

David R. Schanker
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. 2006AP3205

Cir. Ct. No. 2006SC3919

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

TOWNE LAKES APARTMENTS,

PLAINTIFF-RESPONDENT,

V.

BLIA VANG AND SUE XIONG,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Outagamie County: HAROLD V. FROEHLICH, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Blia Vang and Sue Xiong appeal a judgment of eviction and writ of restitution in favor of Towne Lakes Apartments. Vang and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Xiong (the tenants) argue Towne Lakes failed to give them proper notice allowing five days to remedy the default, as required by WIS. STAT. § 704.17(2)(b) before giving a written fourteen-day notice of eviction. The tenants also argue the notices were improperly served. We conclude the notice was proper and the notices were properly served. We therefore affirm.

BACKGROUND

¶2 Towne Lakes entered into a one-year written lease agreement with the tenants on April 1, 2006. The lease included a provision that restricted the amount of noise tenants could make. After Towne Lakes received complaints regarding loud noises coming from the tenants' apartment, it asked the tenants to cease the loud noises. Towne Lakes then followed up with a written notice on May 31, 2006, which informed the tenants of the applicable lease covenants, that such covenants had been violated, and stated failure to comply could result in "re-evaluation of this tenancy."

¶3 On July 13, 2006, Towne Lakes received another noise complaint regarding the tenants. Towne Lakes responded in person and followed up the response with a written notice on July 14. The notice stated that the tenants' failure to comply with the lease covenants one more time would result in eviction proceedings. The notice was posted on the door of the apartment and the tenants admitted receiving the notice.

¶4 Towne Lakes received noise complaints again on September 3, 2006. Towne Lakes responded in person at the time of the complaint. It then issued a fourteen-day notice to vacate the premises on September 5, which the tenants admitted receiving. The tenants did not vacate and Towne Lakes

commenced an eviction action. A trial was held on December 11. A judgment of eviction was entered and a writ of restitution issued.

DISCUSSION

¶5 Construction of a statute and its application to the facts the trial court found presents a question of law we review without deference. *State v. Schmidt*, 2004 WI App 235, ¶13, 277 Wis. 2d 561, 691 N.W.2d 379. We begin with the language of the statute. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. That language is given its common, ordinary, and accepted meaning. *Id.* We interpret language in the context in which it is used, in relation to the language of surrounding or closely related statutes, and in a way that avoids absurd results. *Id.*, ¶46. We also consider the purpose of the statute so far as the purpose is shown in the text and structure of the statute. *Id.*, ¶48.

¶6 The allegations in this case involve noise violations under a one-year lease. Therefore the applicable statute is WIS. STAT. § 704.17(2)(b), which provides in relevant part:

If a tenant under a lease for a term of one year or less, or a year-to-year tenant ... breaches any covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord gives the tenant a notice requiring the tenant to remedy the default or vacate the premises on or before a date at least 5 days after the giving of the notice, and if the tenant fails to comply with such notice. ... If within one year from the giving of any such notice, the tenant again commits waste or breaches the same or any other covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord, prior to the tenant's remedying the waste or breach, gives the tenant notice to vacate on or before a date at least 14 days after the giving of the notice.

Thus, the statute requires a notice that allows the tenant at least five days to remedy the default. Additionally, serving the five-day notice is a prerequisite to giving a fourteen-day eviction notice. Section 704.17(4) states notices must be in writing and served as specified by WIS. STAT. § 704.21.

¶7 The tenants first argue that Towne Lakes improperly served the notices detailing the lease violations and the fourteen-day notice to vacate. However, at trial the tenants admitted receiving the second notice of violation as well as the fourteen-day notice to vacate. WISCONSIN STAT. § 704.21(5) states if notice is actually received, “the notice is deemed to be properly given.” Therefore, the second written warning and the fourteen-day notice were properly given. We need not determine whether the first notice of violation was properly given because the tenants admitted receiving the second notice and WIS. STAT. § 704.17(2)(b) only requires one warning and opportunity to remedy be given prior to the fourteen-day notice to vacate.

¶8 The tenants next argue the eviction was improper because they never received a proper five-day notice with an opportunity to cure the default. As noted above, a proper five-day notice is a prerequisite to a fourteen-day notice to vacate. Towne Lakes argues that because the tenants admitted receiving the second violation notice and were not served the fourteen-day notice to vacate until they again violated the terms of the lease six weeks after the second notice, the argument is moot. Towne Lakes also argues:

Vang apparently believes that the statutes entitle her to notice giving her five (5) days to become quiet. Towne Lakes instead notified Vang verbally that she must remedy the situation immediately. These verbal instructions were followed by documentation of the violation of the terms of the lease. The fact that Vang was evicted for violations of

the lease that occurred over a period of five (5) months renders this argument without merit.

Towne Lakes' reliance on any verbal warning it gave is misplaced. The statutes are clear that a notice of eviction must be in writing. WIS. STAT. § 704.17(4).

¶9 However, the second written notice provided by Towne Lakes did comply with the purpose of the statute. The purpose of the statute is to allow the tenants a period of at least five days to bring their behavior into compliance with their lease. While the notice Towne Lakes provided did not state the tenants had five days to correct their behavior, it did warn them that they needed to bring their behavior into compliance and stated that one more violation would result in eviction proceedings. Further, Towne Lakes did not serve the fourteen-day notice to vacate until more than five days had passed. Therefore, Towne Lakes' notice complied with the statute.

By the Court.—Judgment affirmed.

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

