

**COURT OF APPEALS
DECISION
DATED AND FILED**

DECEMBER 2, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-1983

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CEDRIC BROWN, SR. AND SHERI BROWN,

PLAINTIFFS-APPELLANTS,

V.

JOHN F. HOFFMAN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Brown County:
VIVI L. DILWEG, Judge. *Affirmed.*

CANE, P.J. Cedric and Sheri Brown appeal from an order dismissing their small claims action for return of twice their security deposit. The Browns contend the trial court erred by granting their landlord, John Hoffman, a trial de novo after the entry of a default judgment before the court commissioner and without a showing of good cause to justify relief from the judgment; the trial court incorrectly calculated damages for failure to return or account for the

security deposit by deducting certain items before doubling the amount of the security deposit; and the trial court improperly found certain items of damage undisputed after leading the Browns to believe that they did not need to present evidence on damages. This court rejects the arguments and affirms the order.

Initially, the Browns obtained a default judgment before the county court commissioner for return of double their security deposit. The commissioner refused to set aside the default judgment, concluding that Hoffman failed to show good cause justifying relief from the judgment. In response, Hoffman timely filed his motion to the circuit court for a trial de novo. At the scheduled trial date, the circuit court rejected the Browns' argument that Hoffman was required to show good cause in seeking relief from the default judgment and without that showing, a trial de novo before the circuit court was improper.

The circuit court was correct. Section 799.207(2), STATS., provides in part:

The court commissioner's decision shall become a judgment 11 days after rendering, if oral, and 16 days after mailing, if written, except that:

....

(b) Either party may file a demand for trial within 10 days from the date of an oral decision or 15 days from the date of mailing a written decision to prevent the entry of the judgment.

Section 799.207(5) provides in part: "A timely filing of a demand for trial shall result in a new trial before the court on all issues between the parties."

Here, it is undisputed that Hoffman, through his attorney, filed a timely demand for trial after the court commissioner's decision. Consequently, the

trial court was correct that Hoffman was entitled to a trial de novo before the circuit court.

Next, the Browns contend the trial court incorrectly calculated the damages for failure to return or account for the security deposit. The trial court concluded that Hoffman failed to give a timely notice regarding their security deposit of \$620 and, therefore, the Browns argue that the court should have first doubled the deposit before offsetting this amount for damages to the rental unit. Even if the Browns are correct, the trial court found that the damages to the rental unit were \$1,067.75. In addition, the court found that Hoffman was entitled to credit for the \$100 payment to Brown and \$95.82 for an unpaid utility bill. This totals \$1,263.57, more than twice the security deposit. Hoffman was not seeking a judgment for any damages exceeding the doubled security deposit. Consequently, the error, if any, was harmless.

Finally, the Browns contend the trial court misled them into believing they did not need to present evidence regarding the claimed damages. This court is not persuaded. The trial court simply reminded the Browns when putting their evidence in on the issue of whether the security deposit should be doubled that they only had to show Hoffman failed to give notice regarding the security deposit within twenty days. Nothing more can be reasonably read into the court's statement. The Browns were very aware that Hoffman was claiming as a defense that the Browns' damages to the rental unit exceeded the amount of the security deposit, even if doubled. The court's statement does not suggest that the Browns need not present their evidence regarding the claimed damages. Accordingly, the trial court's order dismissing the Browns' action is affirmed.

By the Court.—Order affirmed.

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

