

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 8, 2010

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. 2009AP684

Cir. Ct. No. 2008SC1673

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JOHN HROSCIKOSKI,

PLAINTIFF-APPELLANT,

v.

STEVEN P. CZYS,

DEFENDANT-RESPONDENT.

APPEAL from order of the circuit court for La Crosse County:
TODD W. BJERKE, Judge. *Affirmed.*

¶1 DYKMAN, P.J.¹ John Hroscikoski appeals from the dismissal of his small claims action against Steven Czys for wrongful eviction, failure to return

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

his security deposit or account for its withholding, and damages for property he left at the rental premises. Hroscikoski argues that the trial court erred in dismissing his action because Czys did not follow the proper procedure to evict him, did not provide a written explanation of the amount withheld from the security deposit, did not notify Hroscikoski of where his belongings could be recovered, and failed to provide discovery materials prior to trial. We conclude that the evidence in the record supports the trial court's decision, and we therefore have no basis to reverse. Accordingly, we affirm.

Background

¶2 The following facts are taken from trial testimony. Hroscikoski and Czys entered into a rental agreement beginning January 1, 2007, and ending May 31, 2007. Under the agreement, Hroscikoski rented a room in Czys's home in La Crosse, and paid a \$275 rental deposit.²

¶3 In winter 2007, Hroscikoski consistently turned the thermostat in the apartment to forty-three degrees during the day. Czys told Hroscikoski to turn up the heat since it was below freezing outside and he feared the pipes would freeze. Hroscikoski responded that water did not freeze at forty-three degrees and refused to turn up the heat. Following this discussion, Hroscikoski called Czys to inform him that the faucets in his apartment were not working. Czys found that the pipes had frozen and burst, causing the basement to flood. Czys paid to have the pipes repaired.

² Another tenant, Erik Nasby, also rented a room in the home. After Hroscikoski and Nasby had a physical altercation that resulted in Hroscikoski's arrest for disorderly conduct, Czys agreed to terminate Nasby's rental obligations, and Nasby moved out.

¶4 Czys and Hroscikoski did not get along, and both testified the other engaged in harassing behavior, including name calling. Eventually Czys told Hroscikoski that he should move out when the lease expired on May 31. Czys presented Hroscikoski with a letter on May 21 stating he was keeping the \$275 security deposit to pay for the broken pipes. Hroscikoski responded that there was no evidence proving he was responsible for the damage, or that the pipes had actually frozen, and refused to take the letter. By June 2, 2007, Hroscikoski still had not moved out of the apartment. Czys informed Hroscikoski that he either had to pay or move out since the lease had expired. The two men then engaged in a verbal dispute with both parties calling the police for assistance. Police arrested Hroscikoski for disorderly conduct, and Hroscikoski did not then return to Czys's home or attempt to reside there.³

¶5 Hroscikoski left various items of personal property in the house. Czys placed all the items in bins and locked them in a room in his house. Hroscikoski picked up his belongings on June 21, 2007. He believed that many of his business papers, some clothes, a small coin collection, and a false tooth valued at \$1,010 were missing. After discussions regarding the property and the security deposit were not productive, Hroscikoski brought this action against Czys for damages for Czys's wrongful constructive eviction of Hroscikoski, damages for Czys's failure to provide a statement of security deposit withholdings, and the value of Hroscikoski's missing belongings, plus attorney and court fees, totaling

³ Czys testified that there was a "no contact" order in place after Hroscikoski was arrested, preventing Hroscikoski from going to Czys's home without a police escort. We do not know the details of the court order.

\$4,200. The trial court found that the facts did not support the claims for damages or fees, and therefore dismissed this action. Hroscikoski appeals.

Discussion

¶6 Hroscikoski argues first that Czys did not give him twenty-eight days' notice to end the lease. At trial, his attorney argued that after the rental agreement ended on May 31, 2007, Hroscikoski became a month-to-month tenant, requiring twenty-eight days' notice to terminate the month-to-month tenancy. For purposes of Hroscikoski's appeal, we will assume that Hroscikoski was a month-to-month tenant as of June 1, 2007, and that Czys did not give Hroscikoski notice to end the tenancy. This alone, however, does not entitle Hroscikoski to damages. Even assuming that a tenancy continued into June, Hroscikoski was required to establish at trial that Czys acted wrongfully under the ongoing tenancy to entitle Hroscikoski to damages. We will examine Hroscikoski's assertions of Czys's wrongdoing.

¶7 Hroscikoski argues that Czys wrongfully retained Hroscikoski's security deposit without providing a written statement of the basis for withholding the security deposit within twenty-one days, as required under WIS. ADMIN. CODE § ATCP 134.06. Hroscikoski argues that Czys never gave him a bill for the broken pipe. But § ATCP 134.06(4) requires only that the landlord provide "a written statement accounting for all amounts withheld" from the security deposit. It does not state that the landlord has to provide a bill. Czys testified that he tried to hand Hroscikoski a letter dated May 21, 2007, stating that he was withholding the \$275 security deposit based on the expense to repair the frozen pipes. The trial court found that Czys's testimony was truthful. We cannot reverse the trial court's credibility determinations. See *Groshek v. Trewin*, 2010 WI 51, ¶11,

No. 2008AP787. Thus, Hroscikoski is not entitled to damages based on Czys withholding his security deposit.

¶8 Hroscikoski then argues that Czys violated WIS. ADMIN. CODE §§ ATCP 134.08 and 134.09 by failing to follow a proper eviction process to remove him from the house. He argues that Czys admitted he never began an eviction process against Hroscikoski, and that Czys had Hroscikoski “falsely arrested for disorderly conduct on 6/2/07.” Hroscikoski also implies that Czys generally harassed him, rising to the level of a constructive eviction. First, we have no basis to conclude that Czys had Hroscikoski “falsely arrested.” The evidence establishes that on June 2, 2007, police responded to calls from both Hroscikoski and Czys, interviewed both parties, and arrested Hroscikoski for disorderly conduct. It was the decision of the police, based on their observations and the statements of the parties, to arrest Hroscikoski. Moreover, the trial court found that although Czys called Hroscikoski names, his behavior did not rise to the level of a constructive eviction. The parties gave differing testimony as to the others’ behavior, and again, it was the trial court’s role to determine the credibility of the witnesses. *See Groshek*, 2010 WI 51, ¶11. We cannot disturb the trial court’s determination that Czys did not engage in behavior rising to the level of harassment to support a claim of constructive eviction. Finally, the record shows that after the police arrested Hroscikoski, he did not attempt to reside at the premises. A landlord is not required to evict a tenant who has left the premises after a lease expires.⁴

⁴ Again, the testimony at trial indicated there was a “no contact” order in place preventing Hroscikoski from going to Czys’s home. However, we do not know the details of that court order. Also, at trial, Hroscikoski’s attorney did not argue that the court order resulted in a constructive eviction.

¶9 Hroscikoski then argues that Czys failed to provide him with an itemized list of the property left in the house or notify him where the property was stored, and also confiscated the property contrary to WIS. ADMIN. CODE § ATCP 134.09(4). However, Czys testified that he gathered up all of Hroscikoski's property and stored it in the house, and only threw away items that were clearly garbage. The trial court found these statements to be true. Moreover, there is no evidence in the record that Czys confiscated the property by preventing Hroscikoski from taking that property, and indeed, Hroscikoski claimed his property on June 21, 2007. While Hroscikoski claims that certain items were missing, he was unable to establish in the trial court that Hroscikoski took or threw away those items, and we have no basis to reverse the trial court's factual finding that Czys did not keep or throw away any of those items.

¶10 Finally, Hroscikoski argues that Czys did not provide him with discovery materials prior to trial, contrary to WIS. STAT. § 804.01. Hroscikoski states that Czys provided no documents or tapes to him before trial. He points to the part of the trial transcript where his attorney objected to Czys's offer of a letter from the person who fixed his pipes. Hroscikoski's attorney stated that the letter "seem[ed] to be manufactured for litigation purposes." Hroscikoski complains that the court then changed the subject without holding Czys accountable for the discovery violation. But the record reveals that while the letter was marked, it was never received into evidence. Czys *was* held accountable for the discovery violation: the evidence he presented was not received into evidence, and therefore was not considered by the court.⁵

⁵ The trial court did, however, consider Czys's testimony about the pipes. This is different than considering the letter.

¶11 In summary, we conclude that the trial court's decision is supported by the testimony in the record, and that we have no basis to reverse the court's credibility determinations. Hrosikoski has not established any other reason to reverse the court's decision. Accordingly, we affirm.

By the Court.—Order affirmed.

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