

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 17, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2013AP2180

Cir. Ct. No. 2013SC1052

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CORONA PROPERTIES, LLC A/K/A CORONA PROPERTIES,

PLAINTIFF-APPELLANT,

v.

RANDALL MANYEN,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County:
SHELLEY J. GAYLORD, Judge. *Reversed.*

¶1 BLANCHARD, P.J.¹ In this small claims landlord-tenant dispute the only issue I address is whether there was a basis for the circuit court to award

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

damages allegedly caused by the landlord's retaliatory termination of an oral month-to-month lease to rent a house. I conclude that there was not, and therefore all of the other issues fall away. Accordingly, I reverse.

¶2 Landlord Corona Properties, LLC, and tenant Randall Manyen entered into an initial, written lease for Manyen to rent a house for a term of twelve months, from September 1, 2011 to September 1, 2012. After the initial lease period expired, Corona and Manyen entered into a month-to-month lease on the same property on an oral basis, effective September 2, 2012.

¶3 Corona filed this action for eviction on January 28, 2013, which the court dismissed on March 8, 2013, on the grounds that (1) Corona failed to serve on Manyen an authenticated copy of its amended complaint and (2) the fourteen-day notice terminating tenancy was not attached to the summons and complaint.

¶4 On March 29, 2013, Manyen filed a motion for attorney's fees on the grounds of retaliatory eviction under WIS. ADMIN. CODE § ATCP 134.09(5)(a) and (c) (March 2013) and WIS. STAT. §§ 100.20(5), 704.45(1)(a) and (c), and 704.07(4). Most pertinent to the issue I address in this opinion, Manyen sought damages for "pecuniary loss because of" retaliatory termination by Corona, which would entitle Manyen to "recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee." *See* § 100.20(5).

¶5 On September 11, 2013, the court entered a judgment that memorialized the court's determinations that Corona "retaliated against" Manyen, "in violation of Wis. Adm. Code ATCP 134.09(5) when it terminated his tenancy, and that, pursuant to Wis. Stat. § 100.20(5), the defendant is entitled to recover from plaintiff double his \$1,450 damages, in the amount of \$2,900, plus

reasonable attorney fees of \$2,425.24, for a total of \$5,325.24.” This is the judgment that Corona now appeals.

¶6 On appeal, Corona argues that the court erred in: (1) allowing Manyen to seek recovery of attorney’s fees and costs, because Manyen failed to file a counterclaim; (2) awarding damages and attorney’s fees, because Manyen failed to establish pecuniary losses flowing from a retaliatory eviction of tenancy under WIS. STAT. § 100.20(5); and (3) sustaining the claim for retaliatory eviction, because Manyen was not evicted. I address only the second issue and conclude that it is dispositive in favor of Corona. I conclude that Corona is correct in arguing that the only damages found by the court could not have been caused by the claimed retaliatory termination, as required under § 100.20(5).

¶7 For this reason, it is not necessary to summarize factual details pertinent to Corona’s other two arguments.² The following are additional details pertinent to the damages issue.

¶8 Manyen claimed damages of various types allegedly caused by the alleged retaliatory termination. In the end, however, the court awarded damages based on the values of only the following: paint and painting supplies used by Manyen soon after he moved into the house; time (valued at \$15 per hour) that Manyen spent painting and cleaning, also soon after he moved into the house; and new knobs for kitchen cabinets that Manyen installed, also soon after he moved

² Manyen does not dispute that a “pecuniary loss is a condition precedent to recovery of costs and attorney’s fees” under WIS. STAT. § 100.20(5). See *Grand View Windows, Inc. v. Brandt*, 2013 WI App 95, ¶46, 349 Wis. 2d 759, 837 N.W.2d 611.

into the house.³ In awarding these damages, the court implicitly rejected Corona’s argument that none of these alleged damages could have resulted from retaliatory termination because they involved repair work voluntarily undertaken by Manyen “at the beginning of the tenancy.”

¶9 The parties agree that, ordinarily, the standard of review for a damages finding is the clearly erroneous standard. The parties part company, however, on the question of whether, as Corona argues, a pure legal issue is presented here as to whether the undisputed facts establish that Manyen suffered “pecuniary loss because of” retaliatory termination by Corona, under the terms of WIS. STAT. § 100.20(5). Corona argues that because the issue on appeal is the interpretation of this statutory phrase and its application to undisputed facts, review is de novo.

¶10 Corona properly frames the standard of review. However, under either standard I would reverse. The only pecuniary losses found by the court long predated the alleged retaliatory termination, under a different lease, and so far as the record reveals or Manyen explains, these losses bore no connection whatsoever to the alleged termination, much less were caused by it.

¶11 Manyen’s argument on the issue of damages is not clear. It involves the concept that Manyen established in testimony before the circuit court that he had “informal discussion” with a Corona representative around the time he entered

³ Manyen initially claimed damages that included the following: postage for priority/certified mail for letters sent by Manyen to Corona in January and April 2013; and costs for Manyen’s move out of the house. However, Manyen now acknowledges on appeal that the court did not award damages for these items. In addition, Manyen explicitly withdrew an initial claim of the value of thirty hours “spent dealing with repeated intrusions of Corona.” I address these topics no further.

into the initial, one-year term written lease, that caused Manyen to form the expectation that he might continue to rent the house “for many years.” According to Manyen, it was based on this understanding that he incurred the early painting, cleaning, and knob replacement costs. Put another way, as I understand Manyen’s argument, these costs constitute pecuniary losses resulting from the alleged retaliatory termination because Manyen’s lease term was cut short of the “many years” he anticipated living in the house when he incurred these costs and, thus, he was deprived of the value of the painting, cleaning, and new knobs.

¶12 One problem with this argument is the fact that the alleged retaliatory termination long post-dated the work that Manyen did. Manyen fails to explain how the costs that he incurred for the painting, cleaning, and knob replacement could represent a pecuniary loss that resulted *because of* the alleged retaliatory termination, when it is undisputed that Manyen incurred these costs early in the course of the one-year written lease term, long before Corona’s alleged unlawful termination.

¶13 A second problem is that this argument conflates obligations arising from one rental agreement with those that could arise in connection with a separate rental agreement. The only contractual agreement in force when Manyen incurred the costs at issue was the one-year term written lease, and Manyen could have had no reasonable expectation that he would necessarily be able to renew this lease or agree to a new lease after a year passed.⁴ The only contractual agreement in force at the time of the alleged retaliatory termination was the oral month-to-

⁴ Manyen does not make a legal argument that the “informal discussion” he had with the Corona representative supplanted or amended the written lease agreement of the parties.

month lease. Manyen fails to explain how he suffered any loss from the improvements he made during the term of the written lease when Corona allegedly terminated his tenancy under the oral lease. If there is a legal theory that would support his argument, it is not suggested by his brief on appeal.

¶14 For all these reasons, I conclude that there was no basis to award damages or attorney's fees.

By the Court.—Judgment reversed.

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

