COURT OF APPEALS
DECISION
DATED AND FILED

January 20, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-1517

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

SPRING ISLE II,

PLAINTIFF-APPELLANT,

V.

JENNIFER TRIBBLE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed in part and reversed in part.*

¶1 VERGERONT, J.[1] This is a small claims landlord-tenant dispute between Spring Isle II, a limited partnership, and Jennifer Tribble, who entered into a written lease with Spring Isle II for an apartment in Beaver Dam, Wisconsin. The initial lease was for a one-year term, beginning on July 1, 1997,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1997-98).

and the parties renewed the lease for a second one-year term. After Tribble moved out on August 6, 1998, Spring Isle II initiated this action, claiming that Tribble owed rent until the apartment was re-rented, costs of re-renting, and costs for cleaning and repairs. The trial court determined that Tribble was obligated to pay rent for only two months after she gave notice she was moving out, that she did so and therefore owed no rent; she owed $650 for re-renting fees under the lease; and she owed $150 for carpet cleaning and $135 for floor stripping. The court also determined that Spring Isle II was not entitled to withhold any of the $900 security deposit as it did, and therefore Tribble was entitled to recover twice the security deposit from Spring Isle II. The court deducted the amount Tribble owed from $1,800 and entered judgment in Tribble's favor for $865 plus statutory attorney fees of $50.

¶2 Spring Isle II appeals the judgment, claiming: (1) the court made factual and legal errors in determining that under the job transfer provision in the lease Tribble owed rent for only two months after she gave notice, and (2) the court erred in determining that Tribble was entitled to recover double the security deposit. We conclude that the court did not make any legal or factual errors with respect to the job transfer provision. However, we conclude that the court erred in awarding Tribble double the security deposit for the reasons we explain below. We therefore affirm in part and reverse in part. We also reject Tribble's request for attorney fees on appeal.

JOB TRANSFER PROVISION

Background

¶3 The lease contained the following provision:

> 3. JOB TRANSFER *Tenant has requested this non-form provision* _____ initials
>
> If Tenant's employment is permanently {for 91 Days or more} transferred in excess of 50 miles, and Tenant needs to move from the area prior to the end of the least term, the Tenant may give a 60 day written notice to the Landlord of his/her transfer, and desire to be released from the terms of this lease. The tenant shall give notice of such event on the form provided by the Landlord. Tenant must also provide a notarized documentation and grant permission to the Landlord to further verify such information, and payment to Landlord of a re-renting fee submitted with said notice $500.00 (if tenure of the current one year lease is six months or less), or $350.00 (if tenure is greater than six months of a current one year lease or when the lease is for six months the tenant shall pay the additional rent charged for a short term lease plus a $350.00 re-renting fee) as a re-leasing fee (above and beyond the security deposit). If the above fee is not submitted within 10 days such request an additional fee of $150.00 shall apply.[2]

(Footnote added.)

¶4 At trial, Tribble testified as follows. On July 31, 1998, she went to the landlord's office and told Christine Knaup[3] that she had accepted a new job and was therefore moving out. The job was in Milwaukee, and it was a different employer. Christine who is the 51% owner and a general partner of Spring Isle II, "accepted her notice." Tribble offered to provide a copy of her new employment

[2] In the lease for the first one-year term, Tribble wrote her initials in the blank. In the lease she signed for the second one-year term, she did not. Spring Isle II argued to the trial court that because Tribble did not initial this provision in the second lease, the provision was not part of terms binding the parties during the second one-year term. The trial court rejected this argument, accepting Tribble's undisputed testimony that when she signed the lease for the second one-year term, the landlord had not indicated to her that she had to initial this blank again and she believed all the terms of the first lease were the same in the second lease. Spring Isle II does not challenge this ruling on appeal.

[3] We refer to Christine Knaup by her first name to distinguish her from Peter Knaup, whom we refer to later in this opinion by first name as well.

contract and Christine said that would not be necessary. In the office, in the presence of Christine, Tribble wrote out the following and gave it to Christine:

> To whom it may concern—
>
> This is notice of intent to vacate our Spring Isle apartment at 1217 Wayland Street because of job transfer to Milwaukee. We will be moving out as of 8-6-98.

Tribble asked Christine if this writing was sufficient and Christine said yes. No one from the company told Tribble she had to provide anything else in a more formal form. Tribble believed that the notice she gave on July 31, 1998, was consistent with the job transfer provision in the lease. She paid rent for August and September 1998 because it was her understanding that, under the sixty-day notice provision of the job transfer paragraph, she was responsible for this rent, and for a re-rental fee of $500, and she would then be released from further obligations. She did not pay the $500 because she was told conflicting things about this obligation and when it was due.[4]

¶5 Spring Isle II did not present any evidence at trial disputing Tribble's account of what occurred in the office on July 31, 1998, or what she was told about the sufficiency of the notice she had provided. Spring Isle II's evidence at trial consisted of testimony by Randy Thomas Powers, who cleaned Tribble's apartment for Spring Isle II and testified on matters not relevant to this appeal, and testimony of Peter Knaup, a general partner of Spring Isle II, who laid a

[4] Tribble testified she was told once that there was a $350 fee, and another time she was told the fee would not be charged until it was re-rented. Then she received a letter saying the re-rental fee was $350. The court interpreted the job transfer provision to require that Tribble pay $500 as a re-rental fee because she had been in the apartment less than six months under the current lease, and an additional $150 because that fee was not paid within ten days. The correctness of this ruling is not an issue on this appeal.

foundation for the various exhibits Spring Isle II wished to submit. Spring Isle II was not represented by counsel, and Peter, as well as being a witness, questioned witnesses and presented argument on behalf of Spring Isle II. He argued to the court during trial that the job transfer provision applied only if the tenant's employer transferred him or her to a location more than fifty miles away and not if a tenant voluntarily took a new job more than fifty miles away.

¶6 At the close of all the evidence, Tribble's counsel indicated that he wished to present argument, in particular on the application of the Agriculture, Trade and Consumer Protection (ATCP) regulations in the Wisconsin Administrative Code. After the parties and court agreed on a schedule, with Tribble's counsel submitting the first letter brief, the court stated:

> THE COURT: All right. The evidence is in. Let me see if I need to make any findings here. There really isn't any dispute about some of the facts. It's clear that there was a landlord/tenant relationship based on a written lease between the parties. The lease was renewed or extended through June of 1999. And the tenant did give notice at the end of July, 1998, that she would be terminating, based on a job transfer to Milwaukee. And she gave written notice July 31st, 1998. It was received, date-stamped as received on the same date. Actually, the court would find that she wrote that out in the office of the landlord, with Christine Knaup present, and handed it to her and said, "Is this sufficient?" and apparently got a positive response. And she indicated she'd be able to provide an employment contract or some other verification of her new employment or transfer, and Christine Knaup said that was not necessary.
>
> ….
>
> I'm going to look forward to these briefs, but I would comment that the tenant may have the better side of this argument on the job transfer because of the fact that she went in to Christine Knaup and said: "This is why I have to terminate. And so here's the letter. I'll write the letter. Is this going to be sufficient?" "Yes." "Do you want confirmation of the transfer?" "No, we won't need that."

> I mean it seems like, under those circumstances, most tenants would believe that they were covered by this job transfer provision. I'm not – I'm not ruling that. But if I had to rule today, it would probably be my ruling. But the arguments in the letters may persuade me otherwise. But I'm just telling both sides that's kind of where I'm at at this point.

¶7 Peter submitted written argument on behalf of Spring Isle II. In addition to argument, his submissions contained many factual assertions not in evidence at trial, exhibits not presented at trial, and an affidavit of Christine disputing Tribble's account of what occurred in the office on July 31, 1998. In reply, Tribble's counsel objected to the factual assertions in Spring Isle II's submissions and the new exhibits and affidavits because the evidence in the case had been closed. In addition, Tribble objected to consideration of Christine's affidavit on the ground that, since she did not testify at trial, there was no opportunity for Tribble's counsel to cross-examine her, or for the court to evaluate her credibility, as it had had the opportunity to do with Tribble.

¶8 After briefing, the trial court entered a written decision and order for judgment. With respect to the job transfer provision and the events that occurred in the office on July 31, 1998, the court made findings tracking those it had made at the close of the evidence, based on Tribble's testimony. The court determined that Tribble had offered "to obtain written verification of the employment transfer to a location more than 50 miles away, but Christine Knaup indicated that would not be necessary." The court then stated:

> In saying that, Christine Knaup, as agent for the landlord, was waiving the provision in paragraph number 3 that the tenant provide "notarized documentation and grant permission to the landlord to further verify such information". As of the end of that conversation, therefore, the Court finds that the parties had agreed that the tenant

> could move out and exercise the job transfer provision, paying for the next two months rent and the re-renting fee.

The footnote in the decision stated:

> There was no evidence at trial why the tenant would not be entitled to use the transfer provision of the lease other than the landlord's perception that it was not included as part of the lease renewal. After the trial, as part of its brief, the defendant attempted to put in more evidence on this point in the form of an affidavit by Christine Knaup, as well as additional exhibits. Mr. Griswold is correct that the court cannot consider such submissions after the fact. Christine Knaup was present in the courtroom at trial and if she testified, could have been cross-examined. The defendant could also have given testimony to try to rebut what Christine said. The defendant is denied that opportunity when an affidavit comes in post-trial. That is why it would be unfair to consider evidence mailed in after a trial. The court is disregarding any and all statements in the plaintiff's post-trial brief which are not supported by the evidence given and received at trial.

Discussion

¶9 On appeal, Spring Isle II makes several challenges to the trial court's factual findings, but we conclude none have merit. First, Spring Isle II contends the court's finding regarding what Christine told Tribble is an essential finding of fact, is based on hearsay, and under WIS. STAT. § 799.209(2) (1997-98)[5] an

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[5] WISCONSIN STAT. § 799.209(2) provides:

> The proceedings shall not be governed by the common law or statutory rules of evidence except those relating to privileges under ch. 905 or to admissibility under s. 901.05. The court or court commissioner shall admit all other evidence having reasonable probative value, but may exclude irrelevant or repetitious evidence or arguments. An essential finding of fact may not be based solely on a declarant's oral hearsay statement unless it would be admissible under the rules of evidence.

All references to the Wisconsin Statutes are to the 1997-98 version.

(continued)

essential finding of fact in a small claims action may not be based on a "declarant's oral hearsay statement unless it would be admissible under the rules of evidence." We agree with Tribble that, as an owner of Spring Isle II, the party opposing Tribble in this action, Christine's statements offered against Spring Isle II are not hearsay under WIS. STAT. § 908.01(4)(b)(1) and (4) (admission by party opponent).[6]

¶10 Second, Spring Isle II argues the court erred in disregarding Christine's affidavit, both because the court was incorrect in stating that Christine was present at the trial, and because the court had the discretion under WIS. STAT. § 799.209(4) to consider the affidavit and should have done so in the interest of fairness to Spring Isle II. It does appear from the transcript, as Spring Isle II contends, that the person assisting Peter Knaup with the exhibits at trial was not Christine, because on page twenty-eight of the transcript, Peter asks "Lynn" to hand him some documents. However, we do not view this mistake as

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[6] WISCONSIN STAT. § 908.01(4)(b)1 and 4 provide:

> (4) STATEMENTS WHICH ARE NOT HEARSAY. A statement is not hearsay if:
>
> ….
>
> (b) *Admission by party opponent*. The statement is offered against a party and is:
>
> 1. The party's own statement, in either the party's individual or a representative capacity, or
>
> ….
>
> 4. A statement by the party's agent or servant concerning a matter within the scope of the agent's or servant's agency or employment, made during the existence of the relationship….

undermining the court's reasoning. The important point in the court's reasoning is that accepting Christine's affidavit after trial prevents Tribble from cross-examining her, and from presenting testimony in rebuttal. This is true whether or not Christine was present at trial. The court's concern with the fairness of accepting evidence after trial, whether or not the person was present in the courtroom, is demonstrated by its decision to disregard all statements in Spring Isle II's post-trial submission that were not supported by evidence at trial. Some of those statements are Peter's account of what persons not present at the trial said.

¶11 We conclude the court did not erroneously exercise its discretion in refusing to consider the affidavit, other exhibits and statements not supported by evidence at trial. It is true that the court in a small claims action is to conduct proceedings informally and to allow each party to present arguments and proof, but that obligation is circumscribed by the phrase "to the extent reasonably *required* for full and true disclosure of the facts." *See* WIS. STAT. § 799.209(1) (emphasis added). And, although the court is to admit all (with certain exceptions not applicable here) evidence having reasonable probative value, *see* § 799.209(2), it also has the authority to "establish the order of trial and the procedure to be followed in the presentation of evidence and arguments in an appropriate manner consistent with the ends of justice and the prompt resolution of the dispute on its merits according to the substantive law." Section 799.209(4). The decision whether to accept new evidence in the form submitted by Spring Isle II after the close of evidence is thus one committed to the trial court's discretion. We affirm discretionary decisions if the trial court applies the correct law to the relevant facts in a rational process that arrives at a reasonable result. *See* ***Rodak v. Rodak***, 150 Wis. 2d 624, 631, 442 N.W.2d 489, 492 (Ct. App. 1989).

¶12 The trial court's decision not to consider Christine's affidavit, as well as all statements in the post-trial submissions that were not supported by evidence at trial, meets this test. The court made clear at trial that it did not intend to consider additional evidence when it said to the parties that the evidence was closed and then permitted briefing to address legal arguments. Peter, although not an attorney, indicated during the trial that he was an experienced businessman and had appeared in court in disputes with tenants before. The transcript reflects that he had no trouble presenting evidence at trial, whether through exhibits, his own testimony or questioning witnesses, and that he understood the court procedure. It was reasonable for the court to expect that, if Peter wanted to present evidence in the form of Christine's testimony to dispute Tribble's testimony, he would advise the court of that and ask permission to do so. It was not reasonable for Peter to expect that he could unilaterally decide to submit additional material on essential and disputed factual matters and have them considered by the court. The court's reasoning on the unfairness to Tribble of permitting Spring Isle II to add evidence in post-trial submissions that Tribble would not have the opportunity to examine or rebut is sound and reflects a proper exercise of discretion.

¶13 The other challenges Spring Isle II makes to the court's determination regarding the job transfer provision rely on Christine's affidavit. Since the court properly excised its discretion in refusing to consider this, we do not consider these arguments. The court's factual findings are supported by Tribble's testimony, and are therefore not clearly erroneous. As an appellate court, we must accept the factual findings of trial courts if they are not clearly erroneous. *See* WIS. STAT. § 805.17(2). The trial court's findings support its conclusion that Spring Isle II waived any rights it otherwise had to require that Tribble provide more verification before she could rely on the job transfer

provision, and agreed that she could move out, thereby limiting her obligation to two months' rent and a re-rental fee.

WISCONSIN ADMINISTRATIVE CODE § ATCP 134.06

Damages

¶14 It is undisputed that Tribble paid $900 as a security deposit. Spring Isle II, through its agent, sent Tribble a letter dated August 19, 1998, thirteen days after Tribble moved out, informing her that it was retaining the full amount of the security deposit. The stated reason was that, since the apartment had not yet been re-rented, it could not determine the amount of rent to deduct from the security deposit and would therefore retain the full deposit until the unit is re-rented, or the end of the lease, whichever occurs first.

¶15 WISCONSIN ADMIN. CODE § ATCP 134.06 governs the withholding and return of security deposits. Section ATCP 134.06(2) provides that within twenty-one days after a tenant surrenders the rental premises, the landlord must return the full amount of the deposit less any amounts properly withheld under subsec. (3). The version of § ACTP 134.06(3)[7] that applied to Tribble's lease provided:

> (3) LIMITATIONS ON SECURITY DEPOSIT WITHHOLDING. (a) Except for other reasons clearly agreed upon in writing at the time the rental agreement is entered into, other than in a form provision, security deposits may be withheld only for tenant damage, waste or neglect of the premises, or the nonpayment of:
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> 1. Rent for which the tenant is legally responsible, subject to s. 704.29, Stats.

[7] This section was amended effective January 1, 1999.

Section ATCP 134.06(4)(a) requires the landlord to "describe each item of physical damages or other claim made against the security deposit, and the amount withheld as reasonable compensation for each item or claim."

¶16 Tribble's answer to the complaint did not allege a violation of WIS. ADMIN. CODE § ATCP 134.06, did not contain a counterclaim and did not request damages. In comments at trial and in the post-trial briefs, Tribble advanced the view that Spring Isle II could not recover for the expense of stripping the floors because there was no clear agreement in writing to that effect in a non-form provision at the time the rental agreement was entered into, and it could not recover for either that expense or the carpet cleaning expense because the August 19 letter did not refer to these expenses and that was required by the regulations. In her first post-trial brief, Tribble concluded that she did not owe Spring Isle II any additional money, and "[i]n fact, she is entitled to a refund of some portion of her $900 security deposit." This is the first time Tribble stated that she was seeking the recovery of any amount from Spring Isle II. In her reply brief she repeated the request for the return of a portion of the security deposit, and added a request for "any penalties for the improper withholding of the security deposit," without elaboration or argument on the latter request.

¶17 In its decision, the trial court concluded that since Tribble was entitled to the protection of the job transfer provision, "there was no reason to withhold any of the security deposit for purposes of rent." Although the court found that withholding the security deposit for this reason was in good faith, it concluded that under the relevant case law, Tribble was nevertheless entitled to double the amount of security deposit as damages. The court also observed that the August 19 letter did not itemize any deductions for carpet cleaning or floor

stripping. The court stated its disagreement with Tribble's argument that the failure to specify the floor stripping and carpet cleaning expense in the August 19 letter precluded recovering them as damages, and explained that "[t]he proper remedy from the tenant's point of view is that she gets credit for double her security deposit."

¶18 On appeal, Spring Isle II contends that under ***Pierce v. Norwick***, 202 Wis. 2d 587, 596, 550 N.W.2d 451, 454-55 (Ct. App. 1996), the correct method for computing the amount owed Tribble is to first offset her actual damages of $935 against the security deposit of $900, with the result that she has suffered no pecuniary loss and is therefore entitled to no damages. Tribble responds that the method for calculating damages in ***Pierce*** does not apply because Spring Isle II's August 19 letter did not comply with the requirements of WIS. ADMIN. CODE § ATCP 134.06(4)(a) because it failed to refer to the carpet cleaning, floor stripping or re-rental fee. Therefore, Tribble continues, the method in ***Paulik v. Coombs***, 120 Wis. 2d 431, 355 N.W.2d 357 (Ct. App. 1984), and ***Moonlight v. Boyce***, 125 Wis. 2d 298, 304-05, 372 N.W.2d 479, 483 (Ct. App. 1985), applies, under which the amount of the security deposit is first doubled and *then* the amount Tribble owes is subtracted.[8]

¶19 We observe initially that Spring Isle II did not bring ***Pierce*** to the trial court's attention. The trial court therefore did not have the opportunity to decide how damages should be computed in this case based on ***Pierce***. However,

[8] Tribble also argues that the trial court found that Spring Isle II misrepresented the amount of damages due and therefore violated WIS. ADMIN. CODE § ATCP 134.06(4)(b). That requires an *intentional* misrepresentation. Besides the fact that Tribble did not argue that Spring Isle II violated this provision in the trial court, the court explicitly found that Spring Isle II withheld the security deposit to cover unpaid dues in good faith. That finding is not clearly erroneous.

we do not fault Spring Isle II for this, Tribble did not, either orally or in writing, plead a counterclaim based on a violation of WIS. ADMIN. CODE § ATCP 134.06, request a refund of any portion of the security deposit until her first post-trial brief, and did not ask for "penalties" until her reply brief. We therefore would not expect Spring Isle II to have briefed the correct method of computing Tribble's damages. We therefore consider the issue now.

¶20 We conclude that the method we employed in ***Pierce***, rather than the method in ***Moonlight*** and ***Paulik***, should apply to this case. As we explained in ***Pierce***, when a landlord withholds a security deposit and provides no notice, as was the case in ***Moonlight*** and ***Paulik***, the landlord has hindered any realistic settlement negotiations. ***Pierce***, 202 Wis. 2d at 595-96, 550 N.W.2d at 454. The tenant must file an action to learn whether the landlord has a valid reason for withholding the deposit. In this case, Spring Isle II did provide a timely notice that explained why it believed it was entitled to withhold the entire deposit. This enabled Tribble, if she disagreed with the validity of the reason given, to engage in settlement discussions with Spring Isle II short of filing a court action. Had she chosen to do so, Spring Isle II undoubtedly would have informed her that, even were she correct that she owed no rent, she owed other amounts, in its view, which more than equaled the deposit. Thus, the failure of Spring Isle II to specify in the notice the amounts it believed Tribble owed above the security deposit does not have the same impact on settlement discussions as no notice at all. It is more like the situation in ***Pierce***, where the landlord (although for a different reason) was not entitled to withhold for the reasons stated in the notice, but the notice did perform the function of informing the tenant of the reasons the landlord was relying on, and thus, permit an evaluation of the validity of those reasons. *See* ***id.*** at 596, 550

N.W.2d at 454-55. We therefore reverse the trial court's award to Tribble of double the security deposit, or $1,800.

¶21 In ***Pierce*** the landlord's action to recover for unpaid rent and damages to the premises and the tenants' action alleging a fraudulent withholding of the security deposit in violation of WIS. ADM. CODE § ACTP 134.06(4)(b) were consolidated and tried. The landlord had notified the tenant within twenty-one days that it was withholding the security deposit of $1,000 because $1,000 was owed in unpaid rent and $2,251.52 in additional damages. The jury found the landlord intentionally misrepresented or falsified their claim against the security deposit and should have returned the entire security deposit and also found that the tenants caused damages to the apartment and owed $889 in unpaid rent and damages. *See* ***id.*** at 592, 550 N.W.2d at 453. We concluded the proper application of WIS. STAT. §100.20(5)[9] provides where the landlord complies with the notification requirement of WIS. ADMIN. CODE § ATCP 134.06(2) and (4)(a) and is later determined to have violated subsec. 4(b) by misrepresenting or falsifying damage claims is first to subtract the amount owed to the landlord from the amount owed by the landlord, and then double the difference. We acknowledged that in ***Paulik*** and ***Moonlight*** we held that a violation of the regulations governing the return of a security deposit results in a pecuniary loss equal to the amount of the security deposit regardless of the amount of damages

[9] WISCONSIN STAT. § 100.20(5) provides:

> Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee.

the landlord may recover on a counterclaim. *See* ***id.*** at 595, 550 N.W.2d at 454. However, we noted in those cases the landlords did not provide the tenants with a written statement accounting for the amounts withheld, and we decided that method of calculating damages adopted in those cases should be confined to situations where a landlord retains a security deposit and fails to provide an itemization of damages in violation of § ATCP 134.06(2) and (4)(a). *See* ***id.***

Attorneys Fees

¶22 Tribble asks for attorney fees for this appeal under ***Shands v. Castrovinci***, 115 Wis. 2d 352, 359, 340 N.W.2d 506, 509 (1983), which holds that a tenant who successfully establishes a violation of WIS. ADMIN. CODE § ATCP 134.06 may, under WIS. STAT. § 100.20(5), recover for attorney fees for appellate representation as well as representation in the trial court. Spring Isle II objects to our consideration of attorney fees because Tribble did not assert a counterclaim for a violation of § ATCP 134.06 in the trial court and did not request attorney fees for such a violation in the trial court.[10]

¶23 We agree with Spring Isle II that Tribble should not be allowed to first make a claim for attorney fees for a violation of WIS. ADMIN. CODE § ATCP 134.06 at this stage of the proceedings. It appears that Tribble did not understand until the trial court issued its decision that a violation of § ATCP 134.06 was not a defense to amounts owed a landlord but rather a claim or a counterclaim. By addressing damages for a violation of § ATCP 134.06 in its decision, the trial

[10] Spring Isle II did not make this objection with respect to the trial court's award of damages for a violation of WIS. ADMIN. CODE § ATCP 134.06. That is, on appeal it challenges the trial court's method of computing Tribble's damages, but does not argue that the trial court should not have, sua sponte, considered the issue at all without giving Spring Isle II adequate notice.

court, in effect permitted Tribble to assert a counterclaim that she had not previously asserted orally or in writing. Under WIS. STAT. § 802.09(1) and (2) trial courts have broad authority to decide issues not presented in the pleadings, so long as the opponent is not prejudiced by this. *See* ***State v. Peterson***, 104 Wis. 2d 616, 634, 312 N.W.2d 784, 792 (1981).[11] In a small claims action the rules of pleading are, in some respects, more relaxed than in large claims actions. *See* WIS. STAT. §§ 799.02(4) and 799.20(3). However, in a small claims action, just as in a large claims action, parties may not add claims or requests for relief in ways that prejudice the opposing party by not giving them adequate notice and, thus, a fair opportunity to respond.

¶24 Because Tribble never made clear that she was asserting a counterclaim under WIS. STAT. ch. 134 before or during trial, or in her post-trial briefs, and never requested attorney fees for such a violation in the trial court, Spring Isle II did not have any notice during proceedings in the trial court that paying Tribble's attorney fees was a possible outcome of the suit it initiated to collect money from Tribble. Such notice might have induced Spring Isle II to proceed in a different manner—consider settlement, or request a postponement of the trial to consult counsel, for example.

¶25 In addition, we generally do not consider issues raised for the first time on appeal. *See* ***Johnson v. Johnson***, 199 Wis. 2d 367, 374, 545 N.W.2d 239, 242 (Ct. App. 1996). Although the issue of attorney fees on appeal under WIS. STAT. § 100.20(5) obviously could not have been raised in the trial court, the use of attorney fees for representation at trial in establishing a violation of WIS.

[11] The rules of civil procedure in WIS. STAT. §§ 801 to 847 apply in small claims actions unless WIS. STAT. ch. 799 indicates otherwise. *See* WIS. STAT. § 799.04(1).

ADMIN. CODE § ATCP 134.06 certainly could have been. We therefore conclude that Tribble is not entitled to attorney fees under ***Shands***.

CONCLUSION

¶26 We affirm the trial court's determination that Tribble had paid all rent for which she was liable, but owed Spring Isle II $935 for re-rental fees, costs of carpet cleaning and costs of floor stripping. We reverse the trial court's conclusion that Spring Isle II owed Tribble double the security deposit. When the $900 deposit that Spring Isle II retained is subtracted from the $935 Tribble owes, the result is that Tribble owes Spring Isle II $35. We remand for the trial court to enter judgment consistent with this opinion. We deny Tribble's request for attorney fees for this appeal under ***Shands***.

By the Court.—Judgment affirmed in part and reversed in part.

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