COURT OF APPEALS
DECISION
DATED AND FILED

December 3, 2015

Diane M. Fremgen
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. 2014AP2507 **Cir. Ct. No. 2013SC8930**

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

CHASTITY YOUNG,

PLAINTIFF-RESPONDENT-CROSS-APPELLANT,

V.

LANDSTAR INVESTMENTS LLC,

DEFENDANT-CROSS-RESPONDENT,

DUANE BRANEK,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from judgments of the circuit court for Dane County: RICHARD G. NIESS, Judge. *Reversed; cross-appeal affirmed.*

¶1 KLOPPENBURG, J.[1] In this landlord-tenant dispute, tenant Chastity Young brought a small claims action against landlord Landstar Investments, LLC and property manager Duane Branek for failing to return Young's security deposit and to provide a written accounting of the amount withheld, in violation of WIS. ADMIN. CODE § ATCP 134.06(2) and (4), after Young vacated an apartment owned by Landstar prior to the end of the lease term. After a bench trial, the court held in favor of Young on the security deposit claim and awarded Young double her security deposit plus reasonable attorney fees.[2] The circuit court found Branek, as Landstar's agent, jointly and severally liable for the security deposit regulation violation. Branek appeals, arguing that he had no "power to comply or violate the ATCP code" and, therefore, should not be held jointly and severally liable for the violation.

¶2 Landstar counterclaimed for three months back rent damages accrued after Young vacated the apartment (April 30, 2013) until the end of her lease term (July 31, 2013). The circuit court held in favor of Landstar on its counterclaim and awarded Landstar back rent damages owed by Young after she vacated the apartment. Young cross-appeals, arguing that the lease is void, and therefore, she had a periodic tenancy which terminated after she gave thirty days' notice and vacated the apartment.

---

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[2] WISCONSIN STAT. § 100.20(5) allows for recovery of "twice the amount of [a] pecuniary loss, together with costs, including a reasonable attorney's fee" for violation of any order issued under that section, which includes WIS. ADMIN. CODE § ATCP 134.06. *See* ***Armour v. Klecker***, 169 Wis. 2d 692, 698, 486 N.W.2d 563 (Ct. App. 1992) (stating that WIS. ADMIN. CODE § ATCP 134.06 was adopted pursuant to WIS. STAT. § 100.20 and therefore, "if a court determines that a landlord has violated [§ ATCP 134.06], it is required under the plain unambiguous language of sec. 100.20(5), Stats., to award double damages and attorney fees").

¶3 For the reasons set forth below, I conclude that Branek is not jointly and severally liable for Landstar's violation of the security deposit regulations. I further conclude that the lease is not void and, therefore, the circuit court did not err in awarding Landstar back rent damages. Accordingly, I reverse the judgment against Branek and affirm the judgment granting back rent damages to Landstar.

BACKGROUND

¶4 Chastity Young leased an apartment at Midvale Townhomes in Madison at a monthly rate of $800. The lease term was for six months, beginning February 1, 2013 and ending July 31, 2013. Landstar Investments, LLC owns the apartment, and Cornell Goman owns Landstar. Duane Branek "was the on-site manager of the apartment building and showed Young the apartment on behalf of Landstar" in December 2012.

¶5 Young paid "Midvale Townhomes" a $900 security deposit, which was accepted by Branek on behalf of Landstar. Young moved into the apartment on January 27, 2013 and paid rent for February, March, and April 2013. On April 1, 2013, Young gave notice that she would vacate the apartment on April 30, 2013. Young did not receive a security deposit refund or a written accounting of the amount withheld from Landstar or Branek.

¶6 In November 2013, Young filed a small claims complaint against Landstar and Branek, alleging that Landstar and Branek were her landlords and that they wrongfully withheld her security deposit and failed to provide a written accounting of the amount withheld, in violation of WIS. ADMIN. CODE § ATCP 134.06. Landstar counterclaimed for back rent damages accrued after Young vacated the apartment until the end of her lease term. Young countered that the

lease was void, and therefore, she had a periodic tenancy that terminated after she gave thirty days' notice and vacated the apartment.

¶7 After a bench trial, the circuit court held in favor of Young as to the security deposit and awarded Young double her security deposit plus reasonable attorney fees. The circuit court also held Branek jointly and severally liable with Landstar because Branek was an agent of Landstar and, under WIS. ADMIN. CODE § ATCP 134.02(5), the definition of landlord includes the landlord and the agent acting on the landlord's behalf. As to Landstar's counterclaim, the circuit court held that the lease is not void, and therefore, Young's early termination of tenancy caused Landstar damages in the form of three months of back rent.

DISCUSSION

¶8 As noted in the introduction, Branek appeals the judgment holding him jointly and severally liable for damages from Landstar's violation of WIS. ADMIN. CODE § ATCP 134.06, and argues that he had no "power to comply or violate the ATCP code" and, therefore, should not be held jointly and severally liable for the violation. Young cross-appeals, arguing that the lease is void such that she had a periodic tenancy, which terminated after she gave thirty days' notice and vacated the apartment, and therefore, she is not responsible for additional rent to Landstar after she vacated the apartment. I address Branek's appeal and Young's cross-appeal in the sections that follow. For the reasons set forth below, I conclude that Branek is not jointly and severally liable for the security deposit damages, and that the lease is not void and is, therefore, enforceable by Landstar against Young for back rent damages.

A. Standard of Review

¶9 Resolution of both Branek's appeal and Young's cross-appeal requires the interpretation of regulations and statutes. "[W]hen interpreting administrative regulations, we use the same rules of interpretation as we apply to statutes." ***WDOR v. Menasha Corp.***, 2008 WI 88, ¶45, 311 Wis. 2d 579, 754 N.W.2d 95 (quoted source omitted). "The interpretation and application of a statute to an undisputed set of facts are questions of law that we review independently." ***Singler v. Zurich Am. Ins. Co.***, 2014 WI App 108, ¶16, 357 Wis. 2d 604, 855 N.W.2d 707 (quoted source omitted).

¶10 "Statutory interpretation begins with the language of the statute. Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meanings. Statutes must be interpreted in context, and reasonably, to avoid absurd results. Where statutory language is unambiguous, there is no need to consult extrinsic sources of interpretation, such as legislative history. A statute is ambiguous if its ability to support two reasonable constructions creates an ambiguity that cannot be resolved through the language of the statute itself." ***Id.***, ¶17 (citations omitted).

B. Branek is not Jointly and Severally Liable for Landstar's Violation of Security Deposit Regulation WIS. ADMIN. CODE § ATCP 134.06

¶11 The parties do not dispute that Landstar, as owner of the rental property, violated the security deposit regulation and, therefore, Landstar is liable for damages to Young. The issue on appeal is whether Branek can be held jointly and severally liable under WIS. ADMIN. CODE § ATCP 134.06 for Landstar's violation. As I proceed to explain, § ATCP 134.06 is not intended to encompass

employees who are not acting on the owner or lessor's behalf to return the security deposit or provide a written accounting of the amount withheld; therefore, Branek is not jointly and severally liable for Landstar's violation of that regulation.

¶12 The return of security deposits is governed by WIS. ADMIN. CODE § ATCP 134.06(2), which provides:

> RETURNING SECURITY DEPOSITS. A *landlord* shall deliver or mail to a tenant the full amount of any security deposit paid by the tenant, less any amounts that may be withheld under sub. (3), within 21 days ….

(Emphasis added.)

¶13 If a landlord withholds any portion of a security deposit, WIS. ADMIN. CODE § ATCP 134.06(4)(a) provides:

> If any portion of a security deposit is withheld by a *landlord*, the landlord shall, within the time period and in the manner specified under sub. (2), deliver or mail to the tenant a written statement accounting for all amounts withheld. The statement shall 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.

(Emphasis added.)

¶14 "Landlord" is defined under WIS. ADMIN. CODE § ATCP 134.02(5) to mean:

> the owner or lessor of a dwelling unit under any rental agreement, and *any agent acting on the owner's or lessor's behalf*.

(Emphasis added.)

¶15 The above regulations, read together, set forth the intent to hold liable agents who are "acting on the owner's or lessor's behalf" *to return* the security deposit or *to provide a written accounting* of the amount withheld.

¶16 Here, Branek did not "act[] on the owner's or lessor's behalf" to return the security deposit or to provide a written accounting of the amount withheld, because Landstar did not task Branek with that responsibility. The circuit court asked Goman, the owner of the apartment, "Did Mr. Branek have anything to do with the security deposit return?" Goman testified, "No. [Branek] shows the apartment, he does the lease, and he collects the rent. And [Branek] indicated to me that Ms. Young moved out and this needs to be resolved, which I started tackling it …."

¶17 Although it is undisputed that Branek acted on Landstar's behalf when he *received* the security deposit from Young, nothing in the record shows that Branek acted, or was tasked with acting, on Landstar's behalf to *return* the security deposit or to provide a written accounting of the amount withheld. It is undisputed that the security deposit checks were made out to Midvale Townhomes, that the lease is between Young and Landstar (owner of the Midvale Townhomes apartment), that Branek informed Goman that Young moved out of the apartment, that Branek does not have "anything tied to the account" in which the security deposit is held, and that after Young moved out Goman proceeded to act himself.

¶18 In sum, Young fails to show that Branek was an agent acting on Landstar's behalf, after Young moved out of the apartment, to return the security deposit or to provide a written accounting of the amount withheld. Thus, Branek is not a "landlord" required to comply with WIS. ADMIN. CODE § ATCP 134.06

and is not jointly and severally liable for Young's damages caused by Landstar's violation of that same regulation.[3]

C. Lease is Not Void and is Enforceable

¶19 On cross-appeal, Young challenges the circuit court's award of three months in back rent damages to Landstar on the basis that the lease is void and unenforceable because it contains two rental agreement provisions that are prohibited under WIS. STAT. § 704.44.[4] WISCONSIN STAT. § 704.44 provides in pertinent part:

> Notwithstanding s. 704.02, a residential rental agreement is void and unenforceable if it does any of the following:
>
> ….
>
> (2m) Authorizes the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures as provided under ch. 799.
>
> ….
>
> (6) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord....
>
> (7) Imposes liability on a tenant for any of the following:
>
> (a) Personal injury arising from causes clearly beyond the tenant's control.

[3] This does not preclude possible scenarios in which an agent could be held liable where the agent does act on an owner's behalf to return the security deposit but fails to do so in compliance with the security deposit regulations.

[4] Young also relies on WIS. ADMIN. CODE § ATCP 134.08, which contains the same pertinent prohibitions as WIS. STAT. § 704.44. Therefore, this opinion applies to both the statute and the regulation.

> (b) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees.

¶20 Young contends that because the six-month term lease is void, she was a monthly periodic tenant and her monthly periodic tenancy terminated when she vacated the apartment on April 30, 2013. As was noted in the background section, the end date of the lease term was July 31, 2013. Thus, according to Young, she is not responsible for the three months' rent due under the six-month term lease after she vacated the apartment. In the sections that follow, I address Young's argument as to each of the allegedly prohibited lease provisions. I conclude that neither of the provisions is prohibited under WIS. STAT. § 704.44, and therefore, the lease is not void and Young is liable to Landstar for three months of back rent damages.

1. Abandonment Provision

¶21 Young contends that the lease provision titled "Abandonment By Tenant" is a prohibited rental agreement provision under WIS. STAT. § 704.44(2m), because it "[a]uthorizes the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures." The lease's abandonment provision reads:

> If Tenant shall abandon the premises before the expiration of the lease term, Landlord shall make reasonable effort to release premises and shall apply any rent received, less costs of re-leasing, to the rent due or to become due on the lease, and Tenant shall [sic] liable for any deficiency. If Tenant is absent from the premises for three successive weeks and rent for that same month has not been paid in full, without notifying Landlord in writing to such absence, Landlord, at its sole option, may deem the premises abandoned. If at abandonment Tenant leaves any property in the leased premises, Landlord shall have the right to dispose of the property as provided by law.

Contrary to Young's contention, nothing in the above abandonment provision "[a]uthorizes the eviction or exclusion of a tenant from the premises, other than by judicial eviction procedures" so as to be prohibited under WIS. STAT. § 704.44(2m). The abandonment provision does not implicate, let alone authorize Landstar to contravene, the statutory eviction procedures, which serve the purpose of *removing* "any person who is not entitled to either the possession or occupancy of such real property." *See* WIS. STAT. § 799.40(1).

¶22 Here, the abandonment provision simply recites Landstar's duty to mitigate damages if the tenant abandons the apartment.[5] That is, if the tenant abandons the apartment, Landstar "shall make reasonable effort to release [the apartment] and shall apply any rent received less costs of re-leasing, to the rent due or to become due on the lease." The provision provides the tenant notice that Landstar may deem the apartment abandoned if the tenant: (1) is absent from the premises for three successive weeks, (2) does not notify Landstar of his or her absence in writing, *and* (3) has not paid rent in full for that month. Thus, the abandonment provision applies when the tenant *is no longer* in possession or occupancy of the real property. On the other hand, the statutory eviction procedures apply when the tenant *remains* in possession or occupancy of the real

[5] "Upon the tenant's surrender of the leased premises, the landlord has a duty to exercise reasonable diligence to re-rent the premises in order to mitigate damages." ***First Wisconsin Trust Co. v. L. Wiemann Co.***, 93 Wis. 2d 258, 271, 286 N.W.2d 360 (1980); *see also* WIS. STAT. § 704.29(1) (stating that landlord can recover rent and damages except "amounts which the landlord could mitigate").

property and Landstar seeks to remove that tenant from the property.[6] Young fails to show that the abandonment provision is prohibited under WIS. STAT. § 704.44.

2. Renter's Insurance Provision

¶23 Young also contends that the lease provision titled "Renter's Insurance" is a prohibited rental agreement provision under WIS. STAT. § 704.44(6) and (7). WISCONSIN STAT. § 704.44(6) prohibits a lease provision that "[s]tates that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord." WISCONSIN STAT. § 704.44(7) prohibits a lease provision that "[i]mposes liability on a tenant" for either "[p]ersonal injury arising from causes clearly beyond the tenant's control" or "[p]roperty damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees." The renter's insurance provision in this case reads:

> Landlord requires the Tenant to carry renter's insurance if a dog will be kept on the premises and for all fish aquariums and waterbeds. Tenant must provide a copy of his/her renter's insurance policy or a certificate of insurance for same, which will be maintained in the Tenant's file in the management office. Such renter's insurance policy must name the Landlord as beneficiary in the event of damage. Landlord is not responsible for theft of or damage to Tenant's personal items.

[6] Indeed, the landlord may act to evict based on the non-payment of rent alone, after providing notice under WIS. STAT. § 704.17, well before the landlord may act to re-lease the apartment under the lease abandonment provision. The abandonment provision provides that the landlord may choose to wait to act without commencing an eviction action. If the landlord is correct that the tenant has abandoned the apartment, there is no one to evict. If the landlord is wrong and the tenant has not voluntarily abandoned the apartment, the landlord may be subject to legal consequences, with or without the abandonment provision in the lease.

(Alteration in original.) Young takes issue with the last sentence of the lease provision: "Landlord is not responsible for theft of or damage to Tenant's personal items." However, contrary to Young's contention, this sentence, read in the context of the entire lease, is not prohibited under either WIS. STAT. § 704.44(6) or (7).

¶24 "Contractual provisions must be interpreted within the context of the contract as a whole." ***MS Real Estate Holdings, LLC v. Donald P. Fox Family Trust***, 2015 WI 49, ¶43, 362 Wis. 2d 258, 864 N.W.2d 83. "Contract language is construed according to its plain or ordinary meaning, consistent with 'what a reasonable person would understand the words to mean under the circumstances.' … Interpretations that give reasonable meaning to each provision in the contract are preferred over interpretations that render a portion of the contract superfluous." ***Ash Park, LLC v. Alexander & Bishop, Ltd.***, 2015 WI 65, ¶37, 363 Wis. 2d 699, 866 N.W.2d 679 (quoted source and footnotes omitted).

¶25 Here, the sentence, "Landlord is not responsible for theft of or damage to Tenant's personal items," read within the context of the renter's insurance provision, can only be reasonably interpreted to mean that Landstar is not insuring Young's personal property. This sentence does not waive Landstar's liability for property damages or personal injury "caused by [its] negligent acts or omissions," as is prohibited under WIS. STAT. § 704.44(6). This sentence also does not "[i]mpose[] liability on a tenant" for either "[p]ersonal injury arising from causes clearly beyond the tenant's control" or "[p]roperty damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees" so as to violate WIS. STAT. § 704.44(7).

¶26 In sum, the lease is not void for the reasons argued by Young, and is enforceable by Landstar to recover the rent damages after Young vacated the apartment until the end of the lease term.

CONCLUSION

¶27 For the reasons set forth above, I conclude that Branek is not jointly and severally liable for Landstar's violation of the security deposit regulation. I also conclude that the lease is not void and, therefore, the circuit court did not err in awarding Landstar back rent damages. Accordingly, I reverse the judgment against Branek and affirm the judgment granting back rent damages to Landstar.

By the Court.—Judgment reversed; cross-appeal affirmed.

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