

WISCONSIN SUPREME COURT
FRIDAY, JANUARY 9, 2015
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a Milwaukee County Circuit Court decision, Judge Pedro M. Colon, presiding.

2013AP2207 [Milwaukee City Housing Authority v. Cobb](#)

The issue in this case is whether federal public housing law preempts Wis. Stat. § 704.17(2)(b), which permits landlords to terminate tenancies upon lease breaches if the landlord gives the tenant notice allowing the tenant five days to remedy the default or vacate the premises.

Some background: Felton Cobb lived in an apartment he rented from the Housing Authority of the City of Milwaukee. The Housing Authority is a public body, organized and chartered pursuant to Wis. Stat. § 66.1201, for the purpose of operating a low-income housing program under the U.S. Housing Act of 1937, codified at 42 U.S.C. § 1437, et seq. It is funded by the U.S. Department of Housing and Urban Development (HUD) and regulated by Title 24 of the Code of Federal Regulations.

A Public Safety Officer for the Housing Authority was patrolling the hallways of the building where Cobb lived when he detected the scent of smoked marijuana. The odor was strongest outside the door to the unit occupied by Cobb, who rents from the Housing Authority under the terms of a one-year lease. The officer knocked on the door, and Cobb opened it slightly. The officer noticed that the smell intensified when Cobb opened his door. The officer concluded that Cobb had been smoking marijuana in violation of his lease, although Cobb denied having done so.

The Housing Authority began an eviction action without first giving Cobb the five-day right-to-cure notice required by Wis. Stat. § 704.17(2)(b).

Both Cobb and the public safety officer testified before the trial court, which determined that the officer was more credible and that Cobb had engaged in illegal drug-related activity. Citing certain federal cases, the trial court ruled that, where criminal activity is found by the trial court, there doesn't have to be a cure offered the tenant prior to eviction. The trial court entered judgment evicting Cobb from his apartment.

Cobb appealed, successfully. The specific question for the Court of Appeals was whether the Housing Authority's failure to provide the five-day right-to-cure notice required by Wis. Stat. § 704.17(2)(b) deprived the trial court of competency to adjudicate the eviction action even though the federal public housing law (42 U.S.C. § 1437) does not require a five-day right-to-cure notice. The Court of Appeals answered "yes."

In its filings with the Supreme Court, the Housing Authority argues that § 704.17(2)(b)'s right-to-cure provision runs directly contrary to federal public housing law's objective of preventing crime in federally-assisted housing by permitting the prompt eviction of drug-using tenants.