No.   97-0465-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

JAMES RUDIG,

  PLAINTIFF-APPELLANT,

V.

MJM VENTURES, D/B/A TREND DISTRIBUTING,

  DEFENDANT-RESPONDENT.

        APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM J. HAESE, Judge. *Affirmed.*

        Before Wedemeyer, P.J., Fine and Schudson, JJ.

        PER CURIAM. Landlord James Rudig appeals from the trial court's ruling that his commercial tenant, MJM Ventures, was a month-to-month tenant. Pursuant to this court's order dated April 10, 1997, this case was submitted to the court on the expedited appeals calendar. *See* RULE 809.17, STATS. Upon review of the briefs and record, we affirm.

MJM Ventures took possession of property owned by James Rudig in February 1992. The parties never entered into a written lease. Rudig charged $1500 monthly rent for the space. In February 1994, Rudig raised MJM Ventures's rent to $1800 per month. MJM Ventures began looking for another property to rent because it was unhappy about the rent increase. After finding an alternative space fifteen months later, MJM Ventures vacated the property, giving Rudig one months notice. Rudig was unable to re-rent the property for at least nine months.

Rudig commenced an action against MJM Ventures seeking: (1) rent that was past due at the time MJM Ventures vacated the premises ($1800); (2) compensation for damage to the property; and (3) rent that came due between the time that MJM Ventures vacated and January 31, 1996, the date Rudig contends a year-long lease between the parties ended.

The trial court awarded Rudig $1800 in past rent and a portion of his claimed damages. The trial court ruled, however, that MJM Ventures was a month-to-month tenant, and thus did not owe Rudig rent for the balance of the year during which Rudig was unable to re-rent the property.

Rudig argues that he and MJM Ventures had a year-to-year lease. He bases his argument on § 704.03(2), STATS., which provides:

> ENTRY UNDER UNENFORCEABLE LEASE. If a tenant enters into possession under a lease for more than a year which does not meet the requirements of [the statute of frauds], and the tenant pays rent on a periodic basis, the tenant becomes a periodic tenant. If the premises in such a case are used for residential purposes and the rent is payable monthly, the tenant becomes a month-to-month tenant; but if the use is agricultural or nonresidential, the tenant becomes a year-to-year tenant without regard to the rent payment periods.

Rudig's reliance on this statute is misplaced. The statute specifically provides that it applies only to a tenant who "enters into possession *under a lease for more than a year*…." (Emphasis added.) MJM Ventures did not enter into possession of Rudig's property "under a lease for more than a year." The trial court found that MJM Ventures entered into possession of the property as a month-to-month tenant without a written lease. We will not set aside this factual finding by the trial court because is not clearly erroneous. *See* § 805.17(2), STATS. (The trial court's findings of fact shall not be set aside unless they are clearly erroneous.). The trial court could have reasonably concluded that the tenancy was month-to-month based on the fact that Rudig raised the rent in February 1994, commencing that month, an action inconsistent with a year tenancy because notice of the increase would have been given prior to the expiration of the yearly term.[1]

By the Court.—Judgment affirmed.

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

---

[1] The trial court found that "in February the plaintiff informed the defendant that effective February 1, 1994, the rent would be increased from $1,500 per month to $1,800 per month."