

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 25, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-2650

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

MARJORIE HAUGEN,

**PLAINTIFF-APPELLANT-CROSS-
RESPONDENT,**

v.

**MICHAEL REIS AND RICHARD DURAND, CO-PARTNERS
D/B/A D & R INVESTMENTS,**

**DEFENDANTS-RESPONDENTS-CROSS-
APPELLANTS.**

APPEAL and CROSS-APPEAL from a judgment of the circuit court for Washburn County: EUGENE D. HARRINGTON, Judge. *Reversed and cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Marjorie Haugen appeals a judgment awarding her \$825 for wrongful retention of a security deposit plus statutory costs and fees. She argues that the court should have awarded her double damages and actual attorney fees. Michael Reis and Richard Durand (D & R Investments) cross-appeal the judgment, arguing that they properly withheld the security deposit and are entitled to additional unpaid rent. Because we agree with D & R that Haugen breached the lease and owes rent from the date she stopped payment to the date the lease ended, we need not address the remedies Haugen could have had if the security deposit was wrongfully withheld. We therefore reverse the judgment and remand with direction to grant D & R judgment on the unpaid rent.

¶2 Haugen rented an apartment from D & R starting March 25, 1998 with a lease calling for “a minimum of 12 months rent.” By letter dated July 13, 1998, she notified D & R that she would vacate the premises August 25, 1998. D & R was unable to find a replacement tenant. Therefore, it withheld her \$825 security deposit. Haugen brought this action to recover double the security deposit plus costs and attorney fees under WIS. STAT. § 100.20(5) (1997-98).¹ D & R counterclaimed for the lost rent.

¶3 The trial court concluded that the lease was ambiguous and construed the ambiguity against D & R. The court construed the lease to allow Haugen to vacate the premises at any time upon thirty-days’ notice.

¶4 Construction of a contract and whether a contract is ambiguous are questions of law that we decide without deference to the trial court. *See Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). A

¹ All references to the Wisconsin Statutes are to the 1997-98 version.

contract is ambiguous if it is reasonably susceptible to more than one interpretation. *See id.* The trial court concluded that paragraph 1 and paragraph 5 are inconsistent and therefore the lease is ambiguous.² We conclude that the lease is not ambiguous. It requires the tenant to pay rent for a minimum of twelve months. The thirty-day notice requirement in paragraph 5 merely requires the notice of termination at the end of the lease, which might be extended past the twelve-month minimum. This construction is also consistent with paragraph 17, which allows the landlord the right to show the apartment during the last thirty days of occupancy. The trial court's construction of the agreement gives no weight to the unambiguous first paragraph that makes Haugen responsible for "a minimum of 12 months rent." By construing the contract as having a twelve-month minimum term that requires either party to give thirty days' notice before terminating the lease after the twelve-month minimum, all of the provisions are reasonably reconciled and the contract contains no surplusage. *See State ex rel. Journal/Sentinel v. Pleva*, 155 Wis. 2d 704, 711, 456 N.W.2d 362 (1990).

¶5 Even if the agreement were ambiguous, the court should construe the agreement to give effect to the parties' intent. *See Patti v. Western Machine Co.*, 72 Wis. 2d 348, 353, 241 N.W.2d 158 (1976). Construing an ambiguous contract against the drafter is merely an aid in ascertaining the parties' intent and must

² Paragraph 1 provides:

UPON SIGNING this rental agreement, you are responsible for a minimum of 12 months rent.

Paragraph 5 provides:

Thirty (30) days rent termination notice, in writing, from the first of the month, must be given by the renter prior to vacating the property. The notice is located at the end of this rental agreement. The same 30 days notice shall be given by the landlord to the renter.

yield to clear evidence of the parties' intent. *See Goebel v. First Fed. Sav. & Loan Ass'n*, 83 Wis. 2d 668, 266 N.W.2d 352 (1978). It was undisputed at trial that Haugen understood that she was responsible for twelve months' rent.

¶6 Because the lease did not allow Haugen to vacate the premises before the expiration of the twelve-month minimum, she is responsible for the lost rents' subject to mitigation. D & R properly withheld the security deposit to offset part of its loss. D & R is entitled to judgment for the remaining amount due.

By the Court.—Judgment reversed and cause remanded with directions to grant D & R judgment for lost rents. Costs to the respondents-cross-appellants.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

