

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

November 22, 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. 00-1873-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GLORIA J. BAKER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of conviction of the circuit court for Grant County: ROBERT P. VAN DE HEY, Judge. *Affirmed.*

¶1 VERGERONT, J.<sup>1</sup> Gloria J. Baker appeals a judgment of conviction for absconding without paying rent contrary to WIS. STAT.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98).

§ 943.215(1) (1997-98).<sup>2</sup> Baker challenges the sufficiency of the evidence to support the conviction. We conclude the evidence is sufficient and we therefore affirm.

## BACKGROUND

¶2 On December 1, 1998, Baker signed a rental lease for a mobile home unit. Prior to that date, she paid to Donald Berg, owner of the rental unit, \$150 to be applied to the monthly rent. Donald Berg also signed the lease. Baker moved into the unit on December 7 and paid an additional \$375 that day.

¶3 The parties both testified the written lease did not contain the monthly amount due at the time it was signed. At trial, they disputed the exact amount that was agreed upon. Berg and his wife testified the monthly amount due was \$375 by the first day of the month and \$425 if paid late. Berg also testified that a security deposit was requested in the amount of \$375; however, that amount is not indicated on the written lease, nor was a \$25 monthly charge for having a dog on the premises. Berg and his wife also testified that Baker was responsible for paying both electricity and water bills which were submitted to Baker separately. In contrast, Baker testified the agreed upon rental amount was \$375 by the first of the month, and she denied any knowledge of a late fee charge. She also testified Berg did not tell her, at the time the lease was signed, that she was to pay the water bill. Baker testified the following rental payments were made to Berg: November 23 - \$150; December 7 - \$375; January 6 - \$375; January 8 - \$62.40;

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

February 5 - \$300 and March 15 - \$60. Berg did not dispute that she paid these amounts.

¶4 On March 19, 1999, Berg served Baker with a five-day notice to vacate the premises due to unpaid rent and utilities. Berg testified to having conversations with Baker on April 2 and 3, 1999, in which she told him she had a check, she had to go to the bank to cash it, and she would pay the rent after the check was cashed. Baker testified she did not recall having either of the conversations.

¶5 On April 5, 1999, Baker moved out of her rental unit. Both parties agree she did not give prior notice to Berg before moving out. Both parties agree no further payments were made after March 15. Baker testified she moved because Berg failed to repair defects, which he had initially promised to repair. She also testified to arranging to have her mail forwarded by the post office to her, although she conceded she did not leave her new address with Berg.

## DISCUSSION

¶6 On a challenge to the sufficiency of evidence, we review the evidence to determine whether a reasonable jury could find guilt beyond a reasonable doubt based on the evidence viewed most favorably to the State. *State v. Koller*, 87 Wis. 2d 253, 266, 274 N.W.2d 651 (1979). This court may not substitute its judgment for that of the jury; it is for the jury to resolve conflicting testimony, weigh the evidence, and draw reasonable inferences from the evidence. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). When the record contains evidence, which supports more than one inference, this court must accept the inference drawn by the jury, unless the evidence on which that inference is based is incredible as a matter of law. *Id.* at 506-07.

¶7 Applying this standard, we conclude there was sufficient evidence to support the jury's verdict.

¶8 WISCONSIN STAT. § 943.215(1) provides:

Absconding without paying rent. (1) Whoever having obtained the tenancy, as defined in s. 704.01(4), of residential property he or she is entitled to occupy, intentionally absconds without paying all current and past rent due is guilty of a Class A. misdemeanor.

¶9 A conviction under this statute requires proof of three elements:

- (1) Defendant obtained tenancy of residential property;
- (2) Defendant intentionally absconded. Intentionally abscond means that the defendant left with the mental purpose not to pay all current or past rent due;
- (3) Current or past due rent actually was owed by the defendant.

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¶10 Baker contends no evidence exists on the third element. She argues there was no written agreement because Berg did not have the rent portion of the lease filled in at the time it was signed. She also argues no oral agreement existed because there was confusion over the monthly amount due. She further asserts promised repairs were not made, which was a condition of the rental, and that the unit contained code violations. Last, Baker asserts that Berg cannot recover for a loss of profit when the unit was less than fully functional, and that what she paid in rent was sufficient for the value of the rental.

¶11 We conclude there was sufficient evidence on the third element. The fact that there was a dispute over the terms of the oral agreement does not

mean there was no oral agreement. Moreover, even in the absence of a valid lease, there was sufficient evidence to find there was a periodic month-to-month tenancy. *See* WIS. STAT. § 704.01(2). If the jury believed Berg, it could reasonably find Baker owed him rent. Even if the jury believed Baker on the amount of rent they agreed to, she still owed him some rent if the jury did not accept her testimony on the defects, which it was entitled to do.

¶12 We also conclude there was sufficient evidence on the second element. The jury could choose to believe Berg concerning the conversations with Baker on April 2 and 3. If the jury did so, the jury could infer from her moving out on April 5 without prior notice to Berg, without making any payment, and without leaving him her new address, that she intentionally absconded.

*By the Court.*—Judgment affirmed.

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

