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WISCONSIN LANDLORD SUBJECTED TO TENANCY IN JAIL

In a published opinion, the Wisconsin Court of Appeals confirmed that landlords who fail to provide timely statements explaining the basis for withholding funds from a residential tenant's security deposit may be subject to criminal prosecution and potential jail time.

In *State of Wisconsin v. Lasecki,* 2020 WI App 36, the Wisconsin Court of Appeals affirmed a circuit court judgment convicting Lasecki, a landlord, of two misdemeanor counts of engaging in unfair trade practices for failing to either return his tenants' security deposits in full or provide statements to the tenants explaining why he was authorized to withhold funds.

Generally, the Wisconsin Statutes allow a landlord to withhold from a tenant's security deposit amounts reasonably necessary to pay for certain authorized categories of costs or damages. A landlord that withholds such amounts from a security deposit is required to deliver to the tenant any remaining balance in the security deposit within 21 days.

Although the Wisconsin Statutes make no mention of any further requirement on the part of a landlord who elects to withhold amounts from a security deposit, the Wisconsin Administrative Code applicable to residential tenancies requires landlords that withhold any portion of a security deposit to deliver to the tenant a written statement accounting for all amounts withheld.

Lasecki's troubles began when his tenants filed a complaint with the Wisconsin Department of Agriculture, Trade and Consumer Protection (ATCP) alleging that Lasecki withheld their security deposits but failed to provide them with a statement accounting for the withholding. After Lasecki failed to cooperate with ATCP's investigation into the tenants' complaint, the local district attorney's office became involved, eventually charging Lasecki for his failure to comply with the provisions of the Wisconsin Statutes and Administrative Code pertaining to the return of tenant security deposits.

A jury eventually found Lasecki guilty of the criminal charges brought by the district attorney. The circuit court thereafter awarded the tenants double their respective security deposits (as allowed by statute) and ordered Lasecki to a stayed sentence of 60 days in the county jail—14 days of which Lasecki served.

Lasecki appealed the jury verdict and order of the circuit court claiming that the circuit court lacked jurisdiction because the crimes of which Lasecki was convicted were "not known to law" and that no ordinary person would have sufficient notice that such conduct was criminal.

The Wisconsin Court of Appeals rejected Lasecki's arguments and instead affirmed his conviction, finding that the following framework within the Wisconsin Statutes and Administrative Code does provide notice that would enable an individual like Lasecki to know that his conduct was criminal in nature:

- Section 704.28 of the Wisconsin Statutes allows a landlord to withhold from a tenant's security deposit amounts reasonably necessary to pay for certain categories of authorized costs. This same section instructs landlords to deliver the full amount of any security deposit paid by tenant, less any authorized withholdings, within 21 days.
- While section 704.28 of the Wisconsin Statutes makes no mention of any requirement that a landlord provide a withholding statement to tenants, section ATCP 134.06(4)(a) of the Wisconsin Administrative Code provides that "[i]f any portion of a security deposit is withheld by a landlord, the landlord shall . . . deliver or mail to the tenant a written statement accounting for all amounts withheld."
- Section ATCP 134.01 of the Wisconsin Administration Code, entitled "Scope and Application," provides that chapter ATCP 134 "is adopted under authority of [Wis. Stat. §] 100.20.
- Accordingly, pursuant to section 100.26(3) of the Wisconsin Statutes, any person who intentionally refuses, neglects or fails to obey a regulation or order made or issued under section 100.20, shall, for each offense, be fined not more than $5,000 and imprisoned in the county jail for not more than one year.

After providing the above roadmap of how a landlord arrives at criminal liability for failing to provide a residential tenant with a security deposit withholding statement, the court of appeals' decision opines that an ordinary and reasonably prudent landlord would commonly consult with Chapter 704 of the Wisconsin Statutes (the landlord/tenant law chapter) and would also appreciate the need to understand landlord/tenant regulations set forth by the Wisconsin Administrative Code. The statutory and regulatory framework contained therein is, as the court put it, not beyond the comprehension of an ordinary landlord. As such, Lasecki had sufficient notice that his conduct could constitute a crime under Wisconsin law and the circuit court's verdict and order was affirmed.

The author of this article knows of no other instance in which a Wisconsin residential landlord has been criminally charged for failing to provide a security deposit withholding statement to a tenant. While most violations of this administrative code requirement are dealt with in civil proceedings, the court of appeals confirmed that such violations may also lead to criminal charges. Here, charges may ultimately have been brought against Lasecki in response to his failure to cooperate with the state's investigation into the consumer complaint filed by his tenants; however, the court's decision should impress upon all residential landlords in Wisconsin the importance of providing tenants with a statement of all amounts withheld from

their security deposit.