

Wisconsin Supreme Court Confirms the Consumer Act Does Not Govern Residential Leases

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Posted By: Trace P. Hummel & Derek J. Waterstreet

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On June 5, 2026, the Wisconsin Supreme Court issued its decision in *Koble Investments v. Marquardt*, 2026 WI 19, reversing a court of appeals ruling that had unsettled residential landlord-tenant law across the state. The Court of Appeals originally held that a residential lease is a “consumer transaction” subject to the Wisconsin Consumer Act (“WCA”) debt-collection prohibitions and that the lease was void and unenforceable under Wis. Stat. § 704.44(10) and Wis. Admin Code § ATCP 134.08(10), exposing landlords to double damages and attorney fees for routine leasing conduct. See *Koble Investments v. Marquardt*, 2024 WI App 26, *reversed*, 2026 WI 19. The Supreme Court restored the long-settled understanding that Chapter 704, not the WCA, governs the landlord-tenant relationship and that the tenant was not entitled to double damages and attorneys’ fees because they did not suffer any pecuniary loss.

Background

The case arose when Koble Investments served its tenant a notice terminating their lease for nonpayment of rent during the sixty-day eviction moratorium ordered by Governor Evers at the outset of the COVID-19 pandemic. After Koble recognized the error and moved to dismiss the eviction claim, the tenant’s counterclaims remained. The tenant’s claims included a claim that Koble had violated Wis. Stat. § 427.104(1)(j) of the WCA by attempting to enforce a right it knew or should have known did not exist, and a claim that the lease was void and unenforceable because it allowed termination for a crime “committed in relation to the rental property” and did not include the statutorily-required domestic abuse protections notice pursuant to Wis. Stat. § 704.14.

The Marathon County Circuit Court dismissed the counterclaims, but the Court of Appeals reversed. The Court of Appeals held that the lease was a “consumer transaction” with “an agreement to defer payment” under the WCA, that the lease was void and unenforceable under Wis. Stat. § 704.44(10) and Wis. Admin. Code § ATCP 134.08(10), and that the tenant (via Wis. Stat. § 100.20(5) and Wis. Stat. § 425.308(1)) could recover double damages and reasonable attorneys’ fees and costs against the landlord.

The WCA Does Not Apply to a Residential Lease With Monthly Rent

The Wisconsin Supreme Court held that Wis. Stat. § 427.104 does not govern a residential lease under which rent is payable monthly, because such a lease is not “an agreement to defer payment.” A tenant’s obligation to pay rent accrues month by month. As the Court explained, a residential lease is not an installment contract, each rent payment is a “contemporaneous exchange of consideration,” “one month of rent for one more month of occupancy.” Because an obligation that has not yet arisen cannot be “deferred,” there is no deferral of payment and the WCA’s debt-collection provisions do not reach the transaction.

Wisconsin law caps prepaid rent (treating amounts beyond one month’s rent as a security deposit), prohibits acceleration of rent on default, and requires landlords to mitigate damages by making reasonable efforts to re-rent. These rules are incompatible with the notion that a tenant incurs the entire term’s rent obligation at signing. The Court also placed substantial weight on more than five decades of unbroken practice: no court had ever applied the WCA to a residential lease, the agency that enforces the WCA expressly excludes leasehold interests in real property and points to Chapter 704, and the agency that regulates residential leasing has never relied on the WCA for its authority.

Even a Void Lease Did Not Support a Damages Award

The Wisconsin Supreme Court also addressed the damages question and concluded that, even assuming the lease were void and unenforceable for omitting the Wis. Stat. § 704.14 domestic abuse protections notice, the tenant could not recover under Wis. Stat. § 100.20(5). That statute requires that the tenant actually suffer a pecuniary loss as a result of the lease violation, which the Court determined there was none present. The tenant offered no proof in the record of paying the late fees or the eviction filing fee, and a claimant must prove it actually paid the challenged charges. As for the rent that was paid, a void lease does not entitle a tenant to occupy the premises rent-free; the tenant becomes a “periodic tenant” pursuant to Wis. Stat. § 704.01(2) still obligated to pay rent on the same basis. The tenant benefits from the bargain: paid rent in exchange for exclusive occupancy of the premises. A lease provision making a lease void/unenforceable does not change that fact.

What This Means for Landlords and the Real Estate Community

The decision is welcome news for residential landlords. It forecloses the Court of Appeals’ theory that ordinary leasing and rent-collection activity could trigger the WCA’s debt-collection penalties, which would have created substantial and unanticipated exposure. Additionally, it gives solace to landlords who may have provisions within a lease that make it void or unenforceable under Wis. Stat. § 704.44 and that tenants cannot pursue landlords for double damages and attorneys’ fees without sustaining a pecuniary loss. At the same time, the opinion is a useful reminder that Chapter 704 and ATCP 134 compliance remains essential. Landlords should confirm that their leases comply with the “Ten Deadly Sins” prohibited in Chapter 704 and ATCP 134.

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