

3095 LANDLORD-TENANT: CONSTRUCTIVE EVICTION

Constructive eviction consists of any disturbance of the tenant's possession of property by the landlord (or someone acting under the landlord's authority) which renders the premises unfit for occupancy for the purposes for which they were leased or which deprives the tenant of the beneficial enjoyment of the premises if:

- the landlord is given notice of the disturbance of possession and fails to remedy the disturbance within a reasonable time;
- the tenant abandons the premises within a reasonable time of the disturbance of possession; and
- the disturbance of possession caused the tenant to abandon the premises.

The disturbance must be substantial and of such duration that it can be said that the tenant has been deprived of the full use and enjoyment of the leased property for a material period of time.

SPECIAL VERDICT

Was (plaintiff) constructively evicted?

Answer: _____
Yes or No

COMMENT

This instruction and comment were originally approved in 1987 and revised in 2012.

Whenever a constructive eviction takes place, the tenant is released from the obligations under the lease to pay rent accruing after the eviction. First Wisconsin Trust Co. v. L. Wiemann Co., 93 Wis.2d 258, 268, 286 N.W.2d 360, 365 (1980). In First Wisconsin, the court explicitly required that the tenant abandon the premises for there to be a constructive eviction.

Wis. Stat. § 704.07, deals with the physical condition of property, rather than a disturbance of tenant's possession by the landlord, but likewise allows a tenant to leave the premises and not be responsible for further rent if the premises become untenable. The statute forbids a tenant from withholding rent in full if the tenant maintains possession of the premises and, instead, provides for an abatement of rent.