

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

FOREST CITY MGMT., INC.
dba CENTER TOWERS

Plaintiff

v.

FLORENCE MCDONALD & OCCUPANTS)

Defendant

CASE NO. 2001 CVG 2806

Magistrate: THOMAS F. LYNETT

MAGISTRATE'S DECISION WITH
FINDINGS OF FACT AND CONCLUSION
OF LAW

MAY 24 11 08 AM '01

CLERK

This matter was scheduled for hearing before Magistrate Thomas F. Lynett on the 12th day of April 2001. Both parties were present in Court and both were represented by counsel.

From the evidence presented by the parties the Court finds the facts to be that plaintiff is the owner of the premises located at 710 White Pond Drive, Akron, Ohio. Defendant is a tenant renting apartment number 409 pursuant to a lease agreement with plaintiff which was signed May 12, 1994. Defendant's current rent is \$144.00 per month.

On or about March 15, 2001, plaintiff served it's notice to leave the premises on defendant, alleging abusive behavior and assaults and threats toward plaintiff's manager. The plaintiff notified defendant that she must be out of the premises before March 21, 2001. On March 23, 2001 plaintiff filed it's FD action herein.

The hearing was scheduled for April 12, 2001. Defendant moved for a dismissal alleging that the Court had no jurisdiction since defendant's examination of plaintiff's manager disclosed that defendant's rent for March of 2001 had been paid on March 5, 2001. The Court allowed both parties to submit post hearing briefs.

From the arguments of counsel and the authorities cited in their briefs, the Court finds that

defendant's position is well taken. This Court is without jurisdiction.

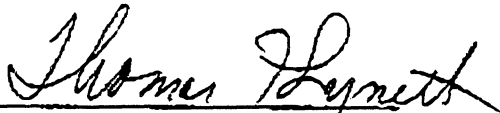
In the case of Summit Management v. Gough CA 19719, Summit County (August 30, 2000), the Ninth District Court of Appeals of Ohio was faced with a similar fact situation and seemed to follow the rules stated in Hile v. Besecker (1947) 82 OH APP30, wherein it stated that notice to vacate during a period for which rent has already been paid is "illegal and of no force or effect".

In the present case, it is undisputed that defendant had paid her rent for the month of March 2001. Further, the notice to leave the premises was served March 15, 2001 with instructions to be out by March 21, 2001 and the FD action was filed on March 23, 2001.

Notice to vacate must specify a date after the expiration of the term for which rent is already paid. According, the Court finds defendant was legally entitled to be in possession of the premises for the period covered by the notice to vacate.

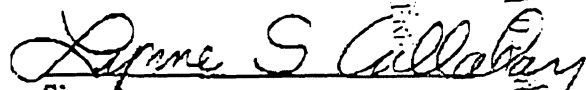
Consequently, finding the notice to vacate illegal and of no force and effect, such failure to serve a proper notice to vacate the premises deprives this Court of jurisdiction.

It is the decision of the Magistrate that plaintiff's FD action is dismissed at it's costs.


Magistrate Thomas F. Lynett

The decision of the Magistrate is approved. It is the judgment of the Court that a Writ of Restitution may not issue. Costs to be paid be the plaintiff.

5/24/01
Date


Signature

cc: Forest City Mgmt, Inc.
Florence McDonald