

IN THE LICKING COUNTY MUNICIPAL COURT

GERALD DEPALMO,

Plaintiff,

-v-

PAULA GEORGE,

Defendant.

FILED

1988 AUG 23 AM 11: 24

CASE NO. 88-CVG-0572

NEWARK, OHIO
LEAN A. MITCHELL

JUDGMENT ENTRY

This dispute has arisen as a result of an attempted termination of a written month-to-month tenancy and the resulting forcible entry and detainer action filed herein.

The facts are not in dispute. The plaintiff served a thirty-day notice upon the defendant by leaving it at the residence on May 1, 1988 and again by serving the defendant personally on May 2, 1988. Both thirty-day notices were identical and requested the defendant to remove herself from the premises on or before May 31, 1988. Thereafter, on May 27, 1988, and before the expiration of the thirty day time period, the plaintiff served upon the defendant a three-day notice demanding the removal of the defendant from the premises on or before June 3, 1988. It is significant to note that the three-day notice was silent as to the grounds upon which the plaintiff was relying with regard to this notice.

On June 6, 1988 a forcible entry and detainer action was filed herein and an answer and jury demand was timely filed by the defendant. A motion for summary judgment was filed on July 6, 1988 by the plaintiff and defendant filed a motion contra on July 19, 1988. Oral arguments were held on July 25, 1988 at which time this court granted partial summary judgment and the defendant was again served in open court with another three-day notice to leave the premises. Again, the grounds for the requested removal from the premises was left blank.

Judge
Russell A. Steiner

Judge
Gregory L. Frost

3 W. Main St.,
Newark, O. 43055

314-349-6652
314-349-6640

On July 29, 1988 the plaintiff filed an amended complaint containing the same allegations as previously stated but setting forth the fact of the service of the second three-day notice in open court. A request for Findings of Fact and Conclusions of Law was filed on August 2, 1988 after the plaintiff filed for Judgment in the Pleadings on July 29, 1988. A Motion for Judgment Notwithstanding the Verdict was also filed by the defendant on August 1, 1988 and several other documents filed by each party were thereafter filed concerning the issue of notice as presented by the facts in this case.

A hearing was held on August 15, 1988 and oral arguments were presented. The issues presented herein primarily revolve around the initial thirty-day notice and the subsequent three-day notices served upon the defendant. So that there is no misunderstanding in the future with regard to forcible entry and detainer actions, this court will attempt to resolve this long-standing dispute concerning the issue of notice as raised herein.

First, with regard to the issue of service of the thirty-day notice served herein upon the defendant on May 1, 1988 and upon May 2, 1988, this court finds that both modes of service were sufficient to give notice to the defendant. This court finds that service of a thirty-day notice terminating tenancy by leaving the same at the premises from which the defendant is sought to be evicted is sufficient service upon the tenant. R.C. 5321.17 provides for the termination of periodic tenancies. No where in the statute is the notice to terminate a periodic tenancy required to be served personally upon the tenant. Further, R.C. 1923.04(A) allows service to be made upon a tenant by certified mail, personal service, or by leaving the notice at the tenant's usual place of abode or at the premises from which the defendant is sought to be evicted. Therefore, this court finds that the service of the original thirty-day notice upon the defendant on May 1, 1988 by leaving the same at the residence of the defendant was sufficient.

Next, this court finds that in the case where the landlord is terminating a periodic tenancy such as the one in the case sub judice, the landlord must wait the full thirty days from the service of notice before a three-day notice can be served upon the tenant. The tenant does not become a hold-over tenant until the tenant has failed to vacate the premises after the thirty days has expired. Also, the thirty day notice must be served upon the tenant at least thirty days prior to the periodic rental date pursuant to R.C. 5321.17(B). Since the rent was due in the tenancy between the parties on the first day of each month, the timeliness of the service of the thirty-day notice upon the defendant on May 1, 1988 is not in dispute. However, the plaintiff, in an apparent attempt to expedite this matter, served the three-day notice on the defendant before the expiration of the thirty days and alleged no grounds in the initial three-day notice.

This court chooses to follow the holding in the case of Ewert v. Basinger (1978), 11 O.O. 3d 171. It was held therein that a landlord must wait until the expiration of the initial thirty days before a three-day notice can be served to commence an action for forcible entry and detainer pursuant to R.C. 1923.04.

Having found that the plaintiff failed to wait until the initial thirty days had elapsed before serving the three-day notice as required by Ewert, supra, the next issue to resolve is the question of whether service of the second three-day notice in open court at the time of the summary judgment hearing and the subsequent filing of the amended complaint is sufficient pursuant to the statutes involved herein. The defendant argues that the service of the three-day notice is jurisdictional and as such, if the service is improper as this court has already found, then the plaintiff may not proceed and the case must be dismissed. The plaintiff relies on Rule 15(E) of the Ohio Rules of Civil Procedure allowing the court to permit parties to supplement their original pleadings setting forth facts which have occurred since

the filing of the original complaint.

This court finds that the service of the three-day notice pursuant to R.C. 1923.04 is jurisdictional in nature and that the court is without authority to proceed if the three-day notice is not served in accordance with the statute. Accordingly, the plaintiff cannot proceed with an amendment to the complaint after service of the three-day notice has been obtained since the court was without authority or jurisdiction to permit the amendment.

Finally, although there is authority to the contrary, this court finds that due process mandates that a landlord, at least in general terms which would put the tenant on notice of the acts complained of, specify the grounds for the eviction in the three-day notice. A three-day notice as required by R.C. 1923.04 serves two basic requirements. First, the tenant is informed of the time frame within which he is required to leave and second, notice is afforded as to why he is being required to vacate the premises. Fairness dictates that this information be contained to at least allow the tenant to make a determination as to what legal rights might be involved. In both instances in this case, the plaintiff has failed to specify grounds.

For the foregoing reasons, the complaint of the plaintiff filed herein is hereby dismissed.

Costs to the plaintiff.


Gregory L. Frost, Judge

NOTICE OF FILING

PLEASE BE ADVISED THAT A JUDGMENT ENTRY OR APPEALABLE ORDER WAS FILED ON AUGUST 23, 1988 AT 11:24 A.M., IN THE CASE OF Gerald Depalmo -vs- Paula George, CASE NO: 88-CV-G-0572

By: -----

Deputy Clerk
Civil Division
Licking County Municipal Court

GLF:ksh
8/22/88
cc: James Pyle ✓
Kenny Schumaker ✓