

FILED

SEP 10 1992

ROSEANNA J. STRONG, CLERK
CHILLICOTHE MUNICIPAL COURT
CHILLICOTHE, OHIO

IN THE CHILLICOTHE MUNICIPAL COURT
CHILLICOTHE, OHIO

FRANK MARTIN, :
 :
 Plaintiff, :
 :
 -vs- :
 :
 CARL WOODS and :
 KATHLEEN WOODS, :
 :
 Defendants. :

Case No. 92 CVG 714
Judge CUTRIGHT

pac
~~PROPOSED~~ FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This case was heard before the Court on September 3, 1992 at 2:15 p.m. Present were Frank Martin, the plaintiff pro se, the Defendants, and James Buchanan of Southeastern Ohio Legal Services, counsel for defendants. Upon the testimony of Plaintiff and the Exhibits introduced during this testimony, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff owns between one and three parcels of land at 1579 Western Avenue on which he has five mobile homes for rent.
2. Defendants entered into the rental agreement for 1579-A Western Avenue during October 1990.
3. Rent was paid by defendants through July 1992.
4. On July 5, 1992 plaintiff mailed a Notice to the defendants requesting that they leave their rented home, and defendants received this Notice on July 7, 1992. The Notice was introduced as an Exhibit during cross-examination of plaintiff.

5. On August 3, 1992, plaintiff delivered to defendant Carl Woods a Notice to Leave the Premises in person. The notice was attached to the Complaint.

6. On August 7, 1992, the plaintiff instituted this action by filing a Complaint in Forcible Entry and Detainer based on the July 5th notice, lawn cutting differences, problems with children and nonpayment.

7. Plaintiff normally collected the rent personally but on August 3rd he testified he did not intend to collect rent but only to deliver the Notice to Leave the Premises. Plaintiff also testified that rent wasn't an issue in the case.

8. The time had not yet passed for defendants to file an Answer and any counterclaims so only the portion concerning forcible entry and detainer was heard.

CONCLUSIONS OF LAW

1. Pursuant to O.R.C. 3733.01(A) and O.A.G. 91-020 this property is a manufactured home park for the purposes of landlord-tenant law in that it has more than three mobile homes on either one tract, or separate tracts under common ownership.

2. Under Schwartz v. McAtee, 22 Ohio St. 3d 14 (1986) a mobile home tenancy cannot be terminated by a notice under O.R.C. 5321.17(B). As a further problem, here the notice was not served 30 days prior to the next rental period, and thus the Notice was insufficient to give the court jurisdiction to hear the case regardless of Schwartz.

3. O.R.C. 3733.13 requires specific notice of "cause" violations and specific language to terminate a tenancy of a mobile home park resident. The July 5th notice did not contain either the cause issues regarding children and the lawn or the statutory language; therefore the notice was defective.

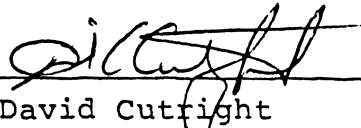
4. A tenancy cannot be terminated until proper notice is provided under O.R.C. 3733.13, and thus the tenancy in this case was not terminated.

5. Without proper notice to terminate the tenancy, this Court must render judgment in favor of Defendants Carl and Kathleen Woods and against plaintiff Frank Martin on the forcible entry and detainer portion of the case.

6. The court finds no just reason for delay of the entry of judgment pursuant to Ohio Civil Rule 54.

SEP 11 1992

Date


Judge David Cutright

FILED

SEP 11 1992

ROSEANNA J. STRONG, CLERK
CHILlicothe MUNICIPAL COURT
CHILlicothe, OHIO

The Clerk of this Court shall serve upon all parties, whether or not in default, notice of this judgment and the date of its entry upon the journal, within three days of such date.


Judge