

IN THE CLEVELAND HEIGHTS MUNICIPAL COURT
CLEVELAND HEIGHTS, OHIO

JAMES W. OLIVER, JR.,
Plaintiff(s)

CASE NO. 94 CVG 0049

vs.

JOURNAL ENTRY

VERONICA MONTGOMERY,
Defendant(s)

Action in forcible entry and detainer; hearing on first cause of action for possession. Plaintiff in Court; Defendant in Court with counsel, Mr. Pollard.

Testimony, inter alia, was that the Notice to Leave the Premises required by Revised Code Section 1923.04(A) was served on Defendant on January 3, 1994. Thereafter, Plaintiff stated, Defendant tendered, and Plaintiff received and accepted, payments of rent for periods after the Notice, including rent for February 1994. Defendant was not behind in her rent as of the date of the hearing, according to Plaintiff. A landlord's acceptance of a tenant's rent payment for a future period, subsequent to the date of the statutory Notice, constitutes a waiver of such Notice. See, Cornerstone Companies & Fairlawn Ventures, Ltd. v. Zipkin, 60 Ohio Misc.2d 14 (Mun. Ct. 1989); see also, Marchioni v. Wilson, 20 Ohio Misc.2d 10 (Mun. Ct. 1984). Having waived the Notice to Leave the Premises, Plaintiff can no longer maintain the action.

(It is noted, parenthetically, that Plaintiff's asserted basis for obtaining restitution-- his own financial hardship-- is not referred to in Revised Code Section 1923.02(A); further, though Plaintiff claimed that the written rental agreement authorizes him to obtain restitution on that ground, he was unable at hearing to produce the rental agreement).

As proper service of a proper Notice (not subsequently waived) is a jurisdictional requirement in Ohio eviction actions, Plaintiff's first cause of action is therefore dismissed, without prejudice, for want of prosecution. Second cause continued for further proceedings pursuant to the Civil Rules.


Referee

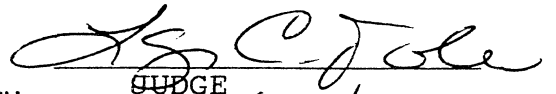
Date

2/23/94

MARIA F. HALLABRIN, CLERK
CLEVELAND HEIGHTS
MUNICIPAL COURT

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FILED
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JUDGE

Date

2/24/94