MUNICIPAL COURT OF

IN THE CUYAHOGA FALLS MUNICIPAL COURT

SUMMIT COUNTY, OHIO

AKRON METROPOLITAN HOUSING AUTHORITY)	CASE NO. 97 CVG 1293	FALLS, OH	
PLAINTIFF)			
vs)	JUDGE LINDA TUCCI TEODOSIO		
LAYSHONDA MAYSON, et al.)			
DEFENDANTS)	ORDER	•	

This cause came to be heard on the objection of the Plaintiff Akron Metropolitan Housing Authority (A.M.H.A.) to the decision of the Magistrate's Decision of September 8, 1997, denying its request for a writ of restitution.

The Magistrate denied A.M.H.A.'s request for a writ of restitution on the grounds of the notice requirement of R.C. §5321.11 Specifically, the Magistrate found that the Defendant's actions of leaving a burning candle unattended, which resulted in a fire, was a health and safety violation requiring a thirty day notice to cure.

Section 5321.11 of the Ohio Revised Code provides as follows:

"If the tenant fails to fulfill any obligation imposed upon him by section 5321.05 of the Revised Code that materially affects health and safety, other than the obligation described in division (A)(9) of that section, the landlord may deliver a written notice of this fact to the tenant specifying the act or omission that constitutes noncompliance with the pertinent obligations and specifying that the rental agreement will terminate upon a date specified in the notice, not less than thirty days after the receipt of the notice. If the tenant fails to remedy the condition specified in the notice, the rental agreement shall terminate as provided in the notice."

The thirty day notice specified by R.C. §5321.11 has held to be required in those instances where a health and safety violation exists. Sandefiur Mgmt, Co. v. Wilson (1985), 21 Ohio App. 3d 160.

In the case at bar, the Defendant received a thirty day notice on or about January 7, 1997. That notice notified the Defendant that her lease would stand terminated in thirty (30) days. It further notified the Defendant that the termination was being sought as a result of a fire which erupted as a result of an unattended candle and which caused extensive damage to the property.

There is nothing in R.C. §5321.11 which requires that a landlord notify the tenant of his or her right to cure. The statute merely provides that the tenancy will terminate if the Defendant fails to cure the condition contained in the notice within the thirty day period. The notice provided by the A.M.H.A. details the violation complained of and clearly states that the tenancy would terminate in thirty (30) days. It is then up to the Defendant to cure the breach complained of within the thirty day period. There was no evidence presented at the hearing before the Magistrate that the Defendant took any steps to cure the health and safety violation complained of. She did not undertake any repairs of the property or do anything to rectify the condition.

The Court finds that the Magistrate erred in holding that the landlord had to outline the steps to be taken by the tenant to cure the violation. This cause is remanded to the Magistrate for further proceedings on Plaintiff's claim for forcible entry and detainer.

IT IS SO ORDERED.

LINDA TUCCI TEODOSIO, Judge

cc: Gregory R. Sain & Tonya D. Whitsett, Attorneys for Plaintiff James E. Brown, Attorney for Defendant File