

IN THE MUNICIPAL COURT OF MANSFIELD, OHIO

STEPHEN J. COOPER : CASE NO. 98-CVG-384  
PLAINTIFF :  
VS : JUDGMENT ENTRY  
LEONARD A. ABERTS JR. :  
DEFENDANT :

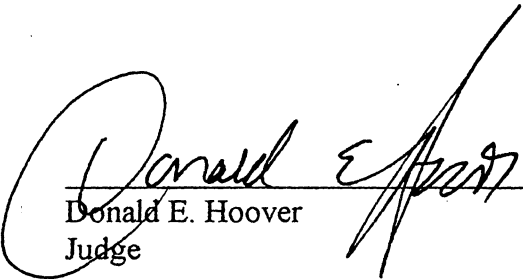
On February 23, 1998 this matter was before the Magistrate pursuant to plaintiff's complaint for eviction. As a result of the hearing, the Magistrate recommended that the eviction be granted. That same day, Attorney Victoria Bartels on behalf of the defendant filed Objections to the Magistrate's Decision. Objection Number One challenges this Court's jurisdiction to hear the eviction due to the complaint being filed prior to the expiration of the three day notice. The three day notice being served February 2, 1998 and the complaint being filed February 5, 1998. The Court then referred the matter back to the Magistrate and the Court now has before it a memorandum from the Magistrate that states his finding that the three day notice was served February 2, 1998 at 10:00 a.m. and that the complaint was filed on February 5, 1998 at 12:27 p.m.. That the three day notice requirements of O.R.C. Section 1923.04 had been met.

This Court finds that the statute requires a three day notice prior to filing the eviction. The statute does not say a seventy-two hour notice. O.R.C. Section 1923.04 specifically requires the notice to notify the adverse party to leave the premises three or more days before beginning the action. The three day notice itself advises the defendant they have three days from the date of that notice to vacate the premises. The notice

requirements does not say seventy-two hours from the time they were served, nor does the notice say that the person must vacate seventy-two hours from the time they were served. The statute and the notice use the word days.

Therefore, the Court finds that plaintiff's three day notice was improper and that, therefore, the complaint was filed prematurely. The Court need not rule on defendant's Objection Number Two.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Magistrate's recommendation is hereby overruled and plaintiff's eviction action is hereby dismissed.

  
Donald E. Hoover  
Judge

DEH/bb

cc: Stephen J. Cooper  
Attorney Victoria Bartels

RECEIVED

APR 11 2007 P 1:49

RECEIVED