

1 IN THE DELAWARE MUNICIPAL COURT
2 DELAWARE, OHIO

3 Continental Investment Partnership
4 dba Westerville Estate MHP
5 Plaintiff

06 CV 131

Case No.

Judge David Sunderman
Magistrate Kevin Pelanda

vs.

6 Julie Hukill
7 Defendant

Judgment Entry / Magistrate's Decision

8 This came on for hearing trial February 16, 2006 on Plaintiff's petition to evict Defendant from
9 a manufactured home park. Attorney Todd Neuman appeared for Plaintiff; Attorney Stacy Thomas
10 appeared for Defendant. Plaintiff alleged Defendant failed to comply with park rules and regulations
11 as a basis for seeking her eviction. Defendant moved the court to dismiss due to Plaintiff's failure to
12 attach to the complaint a copy of the park rules. Plaintiff's counsel tendered a copy of the rules at the
13 hearing. The court denied Defendant's motion to dismiss, but continued the matter to February 23,
14 2006 to allow Defendant a reasonable opportunity to review the rules and prepare for the hearing.

15 On February 23, 2006 both parties again appeared with counsel of record. On the morning of
16 the hearing, Plaintiff filed an amended complaint which added an additional count for relief alleging
17 Defendant failed to pay February 2006 rent when it was due. To permit Defendant a reasonable
18 opportunity to prepare to defend the added claim for eviction, the court set the matter for hearing on
19 March 3, 2006.

20 On March 3, 2006 both parties again appeared with counsel of record. The pleadings show that
21 Plaintiff served a three day notice to leave the premises January 12, 2006 on grounds of noncompliance
22 with park rules and regulations. At this time Defendant had failed to pay January rent when due on the
23 January 1, but park rules provide that delinquent rent is ground for removal only after thirty days.
24 Within the thirty day period Defendant sent her son to the managers' office to pay January rent. The
25 manager refused to accept the rent and advised the son that the park would not accept the rental payment
26 due to the eviction proceeding which had been filed in this court January 19, 2006.

February rent came due February 1. Defendant admits that she did not attempt to tender
February rent due to the manager's prior refusal to accept in January due to pendency of the eviction
action.

When the February rent became due, the same eviction proceedings were still underway. Based
on the manager's statement in January, the court finds that there was no need for Defendant to again
tender rent inasmuch as the manager had made it clear any such tender would be refused. Hence, the
court cannot sustain Plaintiff's claim for eviction based on nonpayment of February rent.

FILED
DELAWARE
MUNICIPAL COURT
DELAWARE, OHIO
2006 MAR -8 AM 8:03
BETTY J. PORTER
CLERK

1 Further, the court finds that nonpayment of rent is not alleged as a ground for eviction in the
2 three day notice to leave premises. As such, the court would be foreclosed from granting an eviction
3 order on such grounds.

4 Time constraints prevented the court from taking the parties' evidence on the first count in
5 Plaintiff's amended complaint alleging the Defendant failed to comply with park rules and regulations.
6 The court rescheduled the matter for further hearing. However, from the pleadings and evidence
7 already adduced, the court finds it lacks jurisdiction to proceed as below discussed.

8 Plaintiff included in the complaint copies of the notices to leave premises. Defendant resides
9 in a manufactured home park. R.C. § 3733.13 imposes additional notification requirements for
10 manufactured home park operators beyond that required in ordinary landlord tenant cases under R.C.
11 § 1923.04. Defendant filed a written motion to dismiss alleging noncompliance with the R.C. § 3733.13
12 requirements in this case.

13 Defendant alleges that Plaintiff's notices failed to comply with the statutory requirements. R.C.
14 § 3711.13 provides in pertinent part

15 If a resident commits a material violation of the rules of the manufactured home park,
16 of the public health council, or of applicable state and local health and safety codes, the park
17 operator may deliver a written notification of the violation to the resident. The notification shall
18 contain all of the following:

19 (A) A description of the violation;

20 (B) A statement that the rental agreement will terminate upon a date specified in the
21 written notice not less than thirty days after receipt of the notice unless the resident remedies the
22 violation;

23 (C) A statement that the violation was material and that if a second material violation
24 of any park or public health council rule, or any health and safety code, occurs within six months
25 after the date of this notice, the rental agreement will terminate immediately;

26 The statute requires at least two notices inasmuch as two material violations of park rules are required
(or, possibly, failure to timely cure the initial violation or condition) to terminate the tenant's leasehold.

The facts in this case are complicated somewhat in that Plaintiff issued three separate notices.

Plaintiff attached the three notices in this case to the amended complaint. The first notice is
dated July 12, 2005 and includes the reference: "2d notice in 3 mos." Though alleged to be a second
violation, Plaintiff apparently did not seek eviction at that time, or failed to secure an eviction order
based on this notice.

Plaintiff's complaint includes a further notices dated December 30, 2005 and January 12, 2006.
These notices cite the park rules and describe the violation(s) as follows: "Sec. 1, #1, #5, #15 - Sec. VII,
#1, #2, #3, #10 - Sec. IX, #6, #7, #8." The second and third notice each omit to set forth any fact or set
of facts alleged to be in violation of the any of the rules cited in the notices.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The July notice includes what is, at best, a partial factual description as follows:

These (referring citations to several park rules) refer to vandalism (beer bottles through all over & others broken near mail boxes (federal), loud music from white van (Lisa Algo) near pond and clubhouse - Jerry Algo

The July notice cites several rules, but only the citation to Section VII, #1 & #3 is common to the second and third notices.

Each of the individual rule subsections cited by Plaintiff in each of the three notices proscribe a variety of acts or conduct. It is impossible to determine from the second or third notices what act or conduct by Defendant is deemed by Plaintiff to have contravened the rules cited therein. R.C. § 3733.14(A) requires that the notice include a "description of the violation; . . ." The second and third notices in this case include a statement of the rules deemed violated, but no "description of the violation" as required by the code.

Plaintiff argues that the second and third notices are in "substantial compliance: with the statute citing *All Seasons Mobile Home Park v. Tymico* (11th Dist. 1996), 1996 Ohio App. LEXIS 5951. In that case, the notices to the tenant included a description of the violation, but no reference to the rules claimed violated. The court there held the notice to be in substantial compliance with R.C. § 3733.14(A).

The facts in *Tymico* are distinguishable from the facts in the case at bar. The notices in *Tymico* contained a complete description of the facts constituting the alleged rule violation. This is all the code requires. The notices omitted a citation to the rule alleged to be violated. The code, however, does not require the notice to cite the rule violated. The code requires only a "description of the offense." As such the *Tymico* notices satisfied the statutory requirements.

One clear purpose of the initial notice required by the code is to give the tenant the opportunity to cure the alleged violation. Several months elapsed after the July notice prior to the present eviction action. Hence, it appears that Plaintiff either pursued no eviction at that time, or failed to obtain an eviction for the violations cited in the July notice. It is unclear whether Defendant cured the objectionable conduct, or Plaintiff simply failed to pursue the matter.

The December and January notices include only a citation to ten different subsections in the rules each one of which proscribes many different actions and conduct. The only subsections in common with the July notice are two subsections under Section VII of the rules. However, the code requires two material violation of the rules within a six month period to merit eviction, or a material violation that the tenant fails to cure within 30 days. In either event, the both notices of the alleged violation must include a "description of the violation."

1 If the July notice (which includes a description of an alleged violation) is the first notice, then
2 only the December notice falls within the required six month period. The December notice omits to
3 include the required violation description. R.C. § 3733.14 provides that the tenant may defend
4 termination of the lease if the rule is unreasonable or if it is not enforced against other tenants.
5 Defendant cannot mount an effective defense in this case where Plaintiff omits to describe the facts
6 which give rise to the alleged violation. Failure to include a description of the violation in the December
7 notice contravenes R.C. § 3733.14(A).

8 If the December notice is the first notice, then January notice is the second notice and either
9 indicates a failure to timely cure the violation alleged in the December notice, or alleges a second,
10 material violation within six months of the violation alleged in the December notice. Yet, with no
11 violation description in either notice, it is impossible to know what Plaintiff is alleging in the second
12 notice. It is impossible to determine from even the most careful review of the December notice what
13 action or conduct Defendant must cure within thirty days in order to avoid a second violation and
14 ultimate eviction from the park.

15 In addition, Defendant has the same right to defend eviction if the rule is unreasonable or not
16 enforced against other tenants. R.C. § 3733.14(D). With no description of the offense in either the
17 December or January notices, it is impossible for Defendant to mount an effective statutory defense.

18 Defendant also maintains that all three notices issued by Plaintiff failed to satisfy the R.C. §
19 3733.14(B) requirement that the notice include a statement the rental agreement will terminate on a
20 "date specified in the written notice not less than thirty days from receipt of the notice."

21 Each notice in this case omits to specify a termination date. Rather, the notices state only that
22 the tenant's rental agreement "shall terminate on the thirtieth (30) day after receipt by you of this
23 notice." The statute requires that the notice include a "date specified in the written notice."

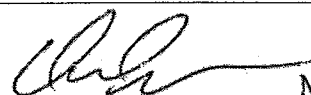
24 The legislature could not be more clear that it expected the notice to include a specific "date,"
25 not a mere reference to a time frame. In this case none of the notices include a statement of the date of
26 receipt by Defendant. Hence, it is impossible to even calculate a "specific date" on which the agreement
is to terminate from even the most careful examination of the notices. The notices do not satisfy the
requirements of the statute as to statement of the date.



Though often referred to as "mobile homes," manufactured homes are, in fact, not very "mobile"
at all. The legislature has afforded manufactured home owners who reside in parks a fair modicum
of protection against indiscriminate and arbitrary eviction. However, the code provides a simple
procedure for park owners to follow in order to evict difficult tenants. The procedure requires a small
amount of patience, but no great effort. The requirement to include in the notices to the tenant a

1 description of the alleged unacceptable conduct and a termination date is not burdensome in any way.

2 The notices issued by Plaintiff in this case do not satisfy the fundamental requirements of R.C.
3 § 3733.14. Absent issuance of the proper notices, the court lacks jurisdiction to proceed. Defendant's
4 motion to dismiss Plaintiff's petition for eviction is sustained. Judgment is granted Defendant
5 dismissing Plaintiff's petition for eviction.

6 The clerk shall serve the parties, or counsel, a copy hereof by regular mail per Civil Rule(s) 53
7 / 58 and indicate below and in the journal said service by initial or signature. A party may not assign
8 as error on appeal the court's adoption of any finding of fact or conclusion of law in that decision unless
9 the party timely and specifically objects to that finding or conclusion as required by Civil Rule 53(E)(3).

10
11
12  March 7, 2006
13 Magistrate Kevin Pelanda

14 copy served: Attorney for plaintiff: 
15 Attorney for defendant: 

16 \06CV131NoEviction.jmt.wpd\0307061926