

IN THE MUNICIPAL COURT OF PORTSMOUTH,
SCIOTO COUNTY, OHIO
SMALL CLAIMS DIVISION

MAX B. PHIPPS, et al., *

Case No. CVG-91-0099

Plaintiffs

FILED
IN MUNICIPAL COURT
PORTSMOUTH, OHIO

(Forcible Detention)

vs.

DANNY CABLE, et al. *
MAR 11 1991

REFEREE'S REPORT
AND RECOMMENDATION

Defendants

Suzy Blawie, Clerk *

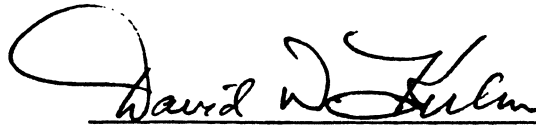
This cause came on for hearing on March 1, 1991, before the Referee, the plaintiffs being present represented by Attorney Charles A. McCrae, and the defendant Nancy Cable, being present represented by Attorney Dennis Harrington of Southeastern Ohio Legal Services Program.

The Referee finds from the evidence that the defendants became tenants of the plaintiff in June, 1988, at a month-to-month rent of \$250.00 per month, due in advance on the first of each month. The Referee further finds that it was customary for the parties to pay and accept rent up to the 10th day of the month. On December 7, 1990, the defendants paid \$250.00 to plaintiffs as rent for the month of December, 1990. No additional rent was paid until January 18, 1991, when the defendant, Nancy Cable, paid \$50.00 to the plaintiff. The Referee finds from the evidence that the defendants' acceptance of the \$50.00, as partial payment of the rent for the month of January, 1991, constituted a renewal of the month-to-month tenancy for the month of January despite

the fact that the amount paid was less than the rental.

The Referee further finds from the evidence that on January 31, 1991, the plaintiffs served a notice for the defendants to vacate the premises by February 10, 1991 (Plaintiffs' Exhibit A). Since a notice to vacate under R.C. 1923.04 may not be served until the expiration of the tenancy, the Referee finds that the notice which the plaintiffs served on the defendants was prior to the termination of the defendants' tenancy and was premature. The court therefore lacks jurisdiction.

It is therefore recommended that this action be dismissed at Plaintiffs' costs.



David W. Kuhn, Referee

copies to:

Charles A. McCrae
Attorney for Plaintiffs

Dennis Harrington
Southeastern Ohio Legal
Services Program
Attorney for Defendants

IN THE PORTSMOUTH MUNICIPAL COURT
SCIOTO COUNTY, OHIO

H-314

Max Phipps, et al
Plaintiff
vs.
Danny Cable, et al
Defendant

No. CVG 910099
FILED JOURNAL ENTRY
IN MUNICIPAL COURT
PORTSMOUTH, OHIO
MAR 14 1991

Suzy Blevins, Clerk

This cause came on for hearing and the evidence presented herein. It is hereby ORDERED that this action be dismissed at Plaintiff's costs as per the Referee's recommendation of 3-13-91.

Attorney for Plaintiff
Defendant
SANDCO

David E. Spear

Judge