

provides "proceedings under this chapter may be had as follows: Against tenants who have breached an obligation that is imposed by section 5321.05 of the Revised Code, other than the obligation specified in division (A)(9) of that section, and that materially affects health and safety..." Obligations specified under O.R.C. 5321.05 include that a tenant keep the premises safe and sanitary and conduct himself in a manner that will not disturb the neighbor's peaceful enjoyment. However, even if the defendant violated these provisions, plaintiff failed to provide the required notice to remedy.

O.R.C. 5321.05 (A)(1) provides that "a tenant who is a party to a rental agreement shall do all of the following: Keep that part of the premises that he occupies and uses safe and sanitary." O.R.C. 5321.05(A)(8) provides that "a tenant who is a party to a rental agreement shall do all of the following: Conduct himself, and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbor's peaceful enjoyment of the premises."

The plaintiff brought this action on the basis of O.R.C. 1923.02(A)(8) which ground refers to the breaching of an obligation imposed by O.R.C. 5321.05. To proceed on such a basis requires the condition precedent of a notice as described in O.R.C. 5321.11. This section provides that "If the tenant fails to fulfill any obligation imposed on him by section 5321.05 of the Revised Code that materially affects health and safety.....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." At trial, no evidence of such a notice was offered. The magistrate finds that the plaintiff failed to meet the jurisdictional grounds to proceed on the basis of a violation of O.R.C. 1923.02 (A)(8).

Although pled in the complaint and made part of the three day notice to vacate, no evidence was offered at trial to establish that the defendant was in arrears in the payment of rent.

Therefore, the magistrate finds that the plaintiff failed to prove any of her grounds by a preponderance of the evidence. Without a written lease in evidence and by failing to give the tenant proper notice to remedy, this court has no jurisdiction to decide the eviction. Therefore, the case must be dismissed for lack of jurisdiction.

Date: 8-10-07

Cornelia Bepko
Magistrate

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Mailed to PA-DA
Chick P. E. [Signature]
Clerk of Court
By _____
Deputy Clerk