

IN THE ADAMS COUNTY COURT, WEST UNION, OHIO
JUN 1 1988

TIM PETERSON

Plaintiff

vs

TOM WOODS

Defendant

Mary R. Mack
Case No. CLEVES ADAMS CO. COURT
08028

JUDGMENT ENTRY

This matter came on for hearing this 25th day of April, 1988, upon the Complaint In Forcible Entry and Detainer filed by Plaintiff. Present were the Plaintiff, unrepresented by counsel, and the Defendant along with his counsel.

The Court finds from the evidence presented, in accordance with the provisions of Chapter 3733, O.R.C., that the subject premises, 522 B Poplar Street, West Union, Ohio is a manufactured home located in a licensed manufactured home park owned by Plaintiff; that Plaintiff is a park operator; that Defendant is a tenant; that both Plaintiff and Defendant are parties to an oral rental agreement on a month to month basis in regard to the subject premises; that Plaintiff served upon Defendant, on March 29, 1988, a Notice to Leave the Premises which states:

"NOTICE TO LEAVE THE PREMISES, (RC Sec. 1923.04 Eff. 11-4-74)

**NOTICE TO LEAVE THE PREMISES
(FOR RESIDENTIAL PROPERTY ONLY)**

"To Tom Woods, et al Tenant:

You are hereby notified that I want you on or before April 1, 1988, to leave the premises you now occupy and which you have rented of me, situated and described as follows: 522 B Poplar St. Blue & white trailer on rear of 522-24 Poplar St trlr park in West Union, County of Adams and State of Ohio.
Grounds: Gross overcrowding of unit, non-compliance of rules, damaging of others property, abusive adults & children.

YOU ARE BEING ASKED TO LEAVE THE PREMISES. IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS AS A TENANT, IT IS RECOMMENDED THAT YOU SEEK LEGAL ASSISTANCE.

3/29, 1988

/s/ Tim Peterson, Landlord
Landlord's Address 417 W. Front
Manchester, Ohio
45144";

that this was the only written notice provided to Defendant from Plaintiff; that Defendant tendered and Plaintiff accepted the payment of rent on April 7, 1988, as and for the period of April, 1988; that Defendant did not vacate and still does occupy the subject premises along with his four minor children; and that Plaintiff filed this action on April 18, 1988, alleging that Defendant was holding over on his term and demanding restitution of the premises.

The Court further finds that at the close of Plaintiff's case, Defendant moved this Court to dismiss the complaint on the grounds that: (1) The Plaintiff failed to serve notice on Defendant in accordance with O.R.C. §3733.13, which is a condition precedent to the filing of this action; and (2) that Plaintiff accepted rent from Defendant after Plaintiff served the Notice To Leave Premises under O.R.C. 1923.04, the effect of which was to void the Notice, which is a jurisdictional prerequisite for Plaintiff's complaint in forcible entry and detainer.

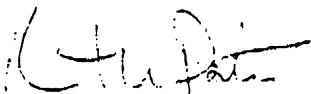
The Court finds, after reviewing the holding in Schwartz v. McAtee (1986) 22 OS3d 14, 22 OBR 12, that the first basis of Defendant's motion, that Plaintiff failed to serve upon Defendant the notice provided in O.R.C. §3733.13, is well taken and hereby **ORDERS** that Plaintiff's complaint be and hereby is dismissed.

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Costs to Plaintiff.

JUDGE JOHN B. CALDWELL

SUBMITTED:



Kenneth W. Porter
Attorney for Defendant