

IN THE DAYTON MUNICIPAL COURT
CIVIL DIVISION

LESLIE E. BRANDY, fka :
Louise Jones, :
 : CASE NO. 77 CVG 9209
Plaintiff, :
 : (Judge Merz)
- vs - :
 : DECISION AND ENTRY
TYRONE E. FONTROY, :
 :
Defendant. :
 :

* * * * *

This action for forcible entry and detainer and for rent was tried to the Court without a jury on Friday, December 9, 1977.

The Court finds that Plaintiff's Exhibit 1 was served residentially upon the Defendant on October 11, 1977, by leaving the original thereof in Defendant's mail box. The original notice was not signed or dated and it did not bear the landlord's address, despite blanks for those items. Service was ten days prior to the date on which Plaintiff requested Defendant to leave the premises and more than ten days prior to the commencement of this action on November 15, 1977. The notice was sufficient to comply with the terms of O.R.C. §1923.04, despite the lack of signature and date, because the Defendant saw the Plaintiff walking away from the house after hearing the mail box close and knew the source of the notice.

The difficulty with Plaintiff's procedure is that Plaintiff has attempted to collapse the notice required by the lease and the notice required by the statute into one form. The notice contemplated by the lease (which incorporates the

applicable regulations, 24 CFR 882.215) envisions a consultation between the parties, possibly involving the local public housing authority, to resolve the differences, or at least an opportunity for such a consultation. The notice given here contains no reference to such a possible consultation; it does not comply with the formal requirement that the lessee be told he or she may respond to the landlord.

In this case the lessee took reasonable steps to respond by dealing with the D.M.H.A. representatives, by following their advice to forward a money order for the rent, and by having them inspect the premises to see whether there was an outside aerial (which would have been a violation of Paragraph 9(o) of the Lease). Mr. Fontroy testified, without contradiction, that he had offered the rent to Mrs. Brandy on October 11 in person, but that she had refused it.

The Lease and applicable HUD regulations require the public housing authority to notify the lessor within twenty days of its determination of the sufficiency of the grounds for eviction. In this case that was not done; indeed, the record is unclear whether Ms. Hughes ever informed Mrs. Brandy she could find no evidence of an outside aerial. However, the reason why no notification on sufficiency of grounds was given was because Mr. Leigh made a prior determination that the notice was formally insufficient -- unsigned, undated, unaddressed -- notified Mrs. Brandy of that determination, and

waited for a new, formally sufficient, notice, which was never sent or received.

Plaintiff questions the authority of D.M.H.A. to reject a notice on formal grounds if there is evidence of lease violations which would be sufficient for an eviction. The Court does not presume to decide whether D.M.H.A. can stop the eviction process by an arbitrary determination of formal insufficiency. In this case the determination was reasonable and D.M.H.A. gave the landlord an opportunity to correct it. Obviously, D.M.H.A. must be allowed some administrative discretion with respect to the formal sufficiency of notice. Otherwise it would have to respond to an oral notice or one that stated no grounds. That discretion was not abused in this case. Accordingly, as an alternative ground for denying relief, the Court holds the landlord did not follow proper procedures with D.M.H.A.

Accordingly, judgment is hereby entered in favor of the Defendant and against the Plaintiff on all claims made in the Complaint. (Of course, Defendant remains liable to Plaintiff for rent if he and his family continue to occupy the premises.) Costs will be assessed against the Plaintiff.

Dayton, Ohio
December 14, 1977.


Michael R. Merz, Judge

cc Bill C. Littlejohn, Esq., Attorney for Plaintiff
Stephen D. Rocha, Esq., Attorney for Defendant
Mr. Harley T. Leigh, Dayton Metropolitan Housing Authority