FILED
DAYTON MUNICIPAL COURT

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IN THE DAYTON MUNICIPAL COURT
CIVIL DIVISION

FITZPATRICK REALTY, Agent for NORTHCREST GARDENS,	:	
Plaintiff,	:	CASE NO. 78 CV G 8102
	:	(Merz, J.)
- vs -	:	
ALVENA WILKEY,	:	DECISION AND ENTRY
Defendant.	:	
	:	

* * * * *

This matter is before the Court upon Plaintiff's motion for reconsideration of the Court's Order granting a judgment of dismissal on the grounds that Plaintiff had not furnished Defendant with a thirty-day notice of lease violation as allegedly required under R.C. §5321.11.

Upon reconsideration, the Court finds the Plaintiff's position well taken. R.C. §5321.11 requires a landlord to give a thirty-day notice, not for any lease violation, but for failure of a tenant to comply with his obligations under §5321.05. The latter section does not incorporate all of the rental agreement obligations of the tenant, nor can §5321.11 be read as extending a notice requirement to all such obligations. When the legislature adopted Chapter 5321, it did not attempt to re-write the landlord-tenant law from the ground up. Rather, it engrafted certain obligations and rights upon the pre-existing law. Except as modified by the statute, the rights of landlord and tenant are to be determined by contract law. There is no general requirement of the contract law that a person in breach is entitled to notice and a grace period within which to cure the breach. There is no warrant in the language of the landlord-tenant act for a change

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JUDGE
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in this general rule of law. I am aware that this leads to the anomalous situation that a tenant has the right to thirty days notice to cure what may be a serious health hazard (e.g. the tenant's obligations under R.C. §5321.05(A)(2)) while there is no such right with respect to violations of leases which may, from the public perspective, be much less serious. Nonetheless, the legislature is not required to correct all evils in the law when it enacts some reform.

Even though Plaintiff's point is well taken, that does not necessarily require reversal. Defendant now argues that the whole lease and clause 15(g) in particular are unconscionable under R.C.§5321.14. I decline to reach the question of whether a long lease may be unconscionable because of its length alone or when used, as here, with a class of tenants with little bargaining power. Nor am I willing to find generally that a prohibition on pets is unconscionable. There is nothing that shocks the conscience in such a prohibition when the keeping of pets may materially affect the quiet enjoyment of co-tenants. The factual record in this case is too sparse to merit reaching that question here.

We are thrown, then, back to consideration of the case under general contract principles. In order for a breach by a promisor to work a discharge of the promisee (and thus entitle a landlord/promisee to eviction), the breach must be material. I specificall find Defendant's alleged breach here is not material enough to work a discharge. If Paragraph 15(h) of the Lease is read as an

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agreement by the tenant that the landlord may have an action in forcible entry and detainer for breach, however slight, of any covenant or condition, then that paragraph is unconscionable and will not be enforced by this Court.

In accordance with the foregoing opinion, the Court's Order is modified to be grounded upon the finding of fact that the breach involved here is not material and judgment is hereby entered in favor of Defendant and against the Plaintiff, dismissing the Complaint with prejudice.

Dayton, Ohio
November 15, 1978.

Michael R. Merz, Judge

Copies of the foregoing were served on the date of filing on Jerome B. Bohman, Esq., and J. Allen Wilmes, Esq.

MICHAEL R. MERZ
JUDGE
DAYTON MUNICIPAL COURT
DAYTON, OHIO 45402