

IN THE DAYTON MUNICIPAL COURT
DAYTON, OHIO
CIVIL DIVISION

FEDERAL PROPERTY MANAGEMENT CORP.,

Plaintiff, : CASE NO. 79 CV G 8820

- vs -

(Merz, J.)

KENNETH JACKSON, Defendant, : DECISION AND ENTRY

FILED
DAYTON MUNICIPAL COURT
NOV 15 11 59 AM '79
M. J. ZELLER
CLERK

Three-day notice to Defendant.

Notice imposed by Defendant's * * * or by this law.

This matter is before the Court for decision on the

points after trial and briefing.

Defendant's argument that the complaint must be dismissed

for failure to plead what program the Plaintiff's project is sub-

sidized under is without merit. Such information should be within

Defendant's knowledge or available on discovery. In any event,

it is not an element of the claim for relief, although of course

the Plaintiff must prove that it has afforded adequate notice.

Copies of the foregoing were served on the date of filing on

both parties. In this case the notice is not adequate. Both parties

agree that 24 C.F.R. Ch. 450 is applicable. 24 C.F.R. §450.4(e)

requires that in rent non-payment cases, the notice of termination

must set forth the amount of arrearage and the method of computa-

tion; that was not done here. Accordingly, the Complaint must

be dismissed.

This alone would decide the case. However, in order to

provide guidance to the parties for the future, the Court wishes

to deal with the additional points raised by Defendant's motion to

dismiss. Rent escrow is not the sole method available to a

Defendant to deal with lack of habitability, but a tenant's failure

to use that method when it is available, along with his failure to

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provide any corroboration of the alleged defects in the apartment, count rather strongly against the credibility of that tenant's testimony.

There is no obligation under 24 C.F.R. Part 450 to give a thirty-day notice in a non-payment situation; nor is such an obligation imposed by Defendant's lease or by Ohio law. An Ohio 3-day statutory notice is sufficient, provided it meets the service and specificity requirements of the federal law.

In accordance with the foregoing opinion, the Complaint herein is DISMISSED WITH PREJUDICE. The Plaintiff's project is subsidized under is without merit. Such information should be within MEM:mrn
October 31, 1979
Dayton, Ohio

/s/ MICHAEL R. MERZ
Michael R. Merz, Judge

it is not an element of the claim for Michael R. Merz, Judge. The Plaintiff must prove that it has afforded adequate notice. Copies of the foregoing were served on the date of filing on John D. Poley, Esq., and Douglass B. Gregg, Esq. Both parties agree that 24 C.F.R. Ch. 450 is applicable. 24 C.F.R. § 450.4(a) requires that in rent non-payment cases, the notice of termination must set forth the amount of arrearage and the method of computation; that was not done here. Accordingly, the Complaint must be dismissed.

This alone would decide the case. However, in order to provide guidance to the parties for the future, the Court wishes to deal with the additional issues raised by Defendant's motion to also. Part escrow available to a Defendant to deal with... a tenant's failure to use that method when it is available, along with his failure to

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