

IN THE MUNICIPAL COURT OF DAYTON, OHIO
CIVIL DIVISION

CHARLES L. & EDNA WILLIAMS

CASE NO. 89-CVG-2173

Plaintiffs,

vs.

DECISION AND ENTRY

BARBARA WILSON

Defendant.

FILED
DAYTON MUNICIPAL COURT

89 APR 10 AM 11:02

DOOLEY
CLERK

This matter came on for trial on Plaintiffs' complaint in forcible entry and detainer on March 30, 1989 at 1:30 p.m. Plaintiffs were present represented by attorney of record, Daryl R. Douple. The Defendant was present with her attorney of record William L. Archer, Jr.

After conferring with the Referee, the parties submitted a case for the Court's decision by stipulation of facts and arguments of law.

In argument that Plaintiffs' case should be dismissed, the Defendant relies primarily on the holding in Sandefur Management Co. v. Wilson, 486 N.E. 2nd 1267 (1985). That case involved HUD regulated housing in which the Defendant failed to pay an electricity bill causing disconnection of electric service, and the subsequent freezing of the pipes within the apartment building. The tenant's action, therein, violated both the terms of a written lease and provisions of O.R.C. §5321.05

materially effecting health and safety.

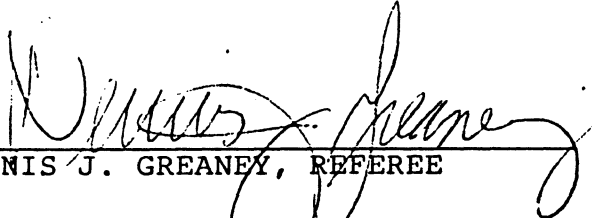
In reviewing the facts of the case, the Court in Sandefur held that where an action of a tenant can be construed to violate both a term of a written lease and a provision of O.R.C. §5321.05 that materially effects health and safety, the 30-day notice of termination of the lease, as required by O.R.C. §5321.11 must be given by the landlord.

In the instant case, the Defendant having failed to pay a water bill, was served with a 3-day notice to leave the premises. Plaintiff failed to serve the Defendant with a 30-notice of termination.

A review of the Sandefur decision finds that case to be applicable to the case at bar. The Court, therefore, in concurring with the holding of Sandefur Management Co. v. Wilson, 486 N.E. 2nd 1267 (1985), finds Defendant's Motion to Dismiss the Plaintiffs' complaint to be well-taken and hereby SUSTAINS the same.

It is therefore, the Order of the Court that Plaintiffs' complaint be, and hereby is, Ordered DISMISSED at Plaintiffs' cost.

So Ordered.


DENNIS J. GREANEY, REFEREE


JUDGE