

FILED
FINDLAY MUNICIPAL COURT

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IN THE FINDLAY MUNICIPAL COURT OF FINDLAY, OHIO

HIGHLAND ESTATES MOBILE HOME PARK, :

Plaintiff

: CASE NO. 92-CVG-1054

vs

: DECISION AND JUDGMENT ENTRY

DENNIS MILLER,

Defendant

COPY

The case before the Court arises from a complaint for forcible entry and detainer filed by Plaintiff, Highland Estates Mobile Home Park, against Defendant, Dennis Miller, seeking to be restored to the possession of the mobile home park lot that is occupied by Defendant's mobile home.

Plaintiff alleges that Defendant failed to abide by certain rules of Plaintiff's mobile home park, and that Defendant had two or more material violations within six (6) months. Pursuant to the provisions of R.C. 3733.13 proof of two or more material violations within a six (6) month period may serve as basis for termination of the rental agreement between a resident and a park operator.

Defendant answered denying the allegations of the complaint and asserted affirmative defenses, under R.C. 3733.13(D), that Plaintiff did not enforce the park rules equally among other park residents and that any violations committed were not committed in bad faith and were not willful.

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The procedural history of the case, including reference to exhibits introduced at the trial, is as follows:

1. On July 31, 1991, Defendant made application to Plaintiff (Exhibit G) and entered into an oral month-to-month tenancy with Plaintiff to lease Lot Number 166 in Highland Estates Mobile Home Park, Findlay, Ohio. Defendant's Rental Agreement (Exhibit A) included his agreement to pay rent of One Hundred Forty-three and 00/100 Dollars (\$143.00) per month and included a copy of the park rules and regulations (Exhibit B) which Defendant acknowledged that he received (Exhibit F).

2. Defendant received a notice of violation, dated October 16, 1991 (Exhibit E) which stated the following grounds of violation: "Must clean up patio & put on new skirting immediately".

3. Defendant received a notice of violation, dated February 26, 1992 (Exhibit D) which stated the following grounds of violation: "ON OCT. 22, 91 you RECEIVED A VIOLATION TO PUT NEW SKIRTING ON YOUR HOME, YOU TOLD ME YOU HAD SKIRTING ORDER BUT IT HAS NOT BEEN PUT ON HOME. THIS IS YOUR LAST WARNING NEXT WILL BE AN EVICTION. THIS MUST BE COMPLETED WITHIN 30 DAYS HITCHES MUST BE REMOVED OR CONCEALED WITH SKIRTING".

4. On May 28, 1992, the park manager, O'Field Watkins, issued a "Notice To Leave Premises" to Defendant alleging "FAILURE TO COMPLY WITH PARK RULES AND REGULATIONS - NEW SKIRTING ON MOBILE - PATIO MUST BE FREE OF DEBRIS - HITCH MUST BE REMOVED - TWO

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VIOLATIONS WITHIN A SIX MONTH PERIOD". The notice was dated May 28, 1992 (Exhibit C) and directed Defendant to leave by June 1, 1992.

5. Defendant did not leave, and on June 2, 1992, Plaintiff filed a Complaint alleging violations of the park rules, specifically Section VI, Paragraph 9; Section IV, Paragraph 2; Section I, Paragraph 16; and Section VI, Paragraph 17. The park rules alleged to have been violated read as follows:

Section VI - GENERAL

Paragraph 9 - Skirting: All homes must be skirted within 30 days of installation and the skirt must conform to the design, construction, and installation standards established by Park Management.

Section IV - MANUFACTURED HOMES

Paragraph 2 -- Hitches must be removed or concealed.

Section I - OCCUPANCY AND RENTAL

Paragraph 16 - The exterior appearance of the manufactured home and adjacent structures must be neat and clean at all times. Hand or power washing and waxing and exterior upkeep of the home is essential and must be done as needed.

Section VI - GENERAL

Paragraph 17 - Any tenant receiving two (2) violation notices within six (6) months may be asked to vacate the premises per Ohio law.

6. Trial was held, and, at the conclusion of Plaintiff's case, Defendant moved for dismissal under the R.C. 3733.13(D) asserting the defenses raised in his answer. The motion was taken

under advisement, without objection, and Defendant presented his evidence.

It is undisputed that the law controlling the decision in this case is found in the provisions of the landlord-tenant law for manufactured home parks; specifically, R.C. 3733.09 through 3733.20.

The Supreme Court case of Schwartz v. McAtee, 22 Ohio St. 3d 14 (1986) reviewed the need to regulate the relationship between the manufactured home park landlord and tenant. Recognizing the significant differences between residential tenants and manufactured home tenants, Schwartz discussed the legislative history of Chapter 3733 which created "formidable restrictions on the ability of manufactured home park operators to evict tenants". Id. at 18. Clearly, the difficulties associated with movement and relocation of a manufactured home present an unenviable task for any owner.

The court recognized the need for a careful balancing of the interests of the manufactured home landlord and tenant, and announced "...that R.C. Chapter 3733 is a remedial statute and, therefore, must be liberally construed in order to promote its object and assist the parties in attaining justice". (Emphasis added) Id. 19.

R.C. 3733.13 outlines the circumstances under which a termination of a rental agreement is possible. Unfortunately, there are few Ohio cases interpreting this section, and court

decisions must be based on the unique facts of each case.

The notices of violation in this case focus on park rules concerning skirting, cleanliness, and hitches.

The language of second notice calls in question whether the notice was actually intended to be a notice of violation or a warning. As noted, the notice stated, "This is your last warning--" (Emphasis added). The court believes that notices of violations should refer to specific rules by section and number to inform the tenant. Clear language should also be used so that there is no confusion whether the notice is actually notification of a violation, or a warning. In spite of the shortcomings of the notice, the court finds that the notices were adequate to inform Defendant of the alleged violations of park rules.

With each notice, a skirting violation was claimed. The court finds that the rule requires skirting to "conform to the design, construction, and installation standards" of the park management. R.C. 3733.11(D) recognizes that the park operator may define by rule the "style or quality" of skirting. However, the trial testimony of the park manager, O'Field Watkins, revealed that there were no such standards in existence and was largely left to the park manager's discretion. Without standards to which a tenant may refer, there is risk that the rule may be subjectively applied to the detriment of a tenant.

The testimony of Defendant and Plaintiff's park manager indicated that there were discussions involving the skirting, but

Defendant was told not to worry about it because of Defendant's limited income at the time. Defendant was also told to take care of it when he could. The court believes that the discussion between the park manager and Defendant could have given a mistaken impression that the park manager was understanding and he was not insisting on skirting until Defendant could afford it. In any event, the court does not find that Defendant's delay in applying the skirting was either willful or in bad faith, within the meaning of R.C. 3733.13, where tenant relied upon statements made by the park manager.

The Defendant's patio was also a subject of concern and the specific rule cited speaks only to the appearance of the manufactured home and adjacent structures. Also, this rule is not specific and is open to subjective application. There was no testimony indicating that Defendant left garbage or other sanitary hazards on his patio. While the court recognizes that it is certainly not unreasonable to expect healthful and sanitary conditions, this was not at issue under the rule cited by Plaintiff. The court does not believe that the facts support a violation of the specific rule cited by Plaintiff since the focus of the rule is on the manufactured home itself and adjacent structures. (Emphasis added)

Ohio law defines a structure as objects, including buildings, fences and walls, 10 O Jur 3d, Building, Zoning and Land Controls, Section 73, 74, and that the particular rule relied

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upon by Plaintiff would not be appropriate for the violation alleged by Plaintiff. Accordingly, the court finds that Defendant did not violate park rule Section I, Paragraph 16.

The remaining violation cited by Plaintiff concerns removal of hitches. Numerous photographs were introduced showing mobile homes with exposed hitches; presumably in violation of the same park rule claimed to have been violated by Defendant.

(Exhibits 6, 7, 8, 9, 10, 11, 12, 13 and 14)

The park manager acknowledged that seven (7) of the mobile homes (Exhibits 6, 8, 9, 10, 11, 12 and 14) had never received a notice of violation for the exposed hitch rule. The only explanation offered during the park manager's testimony for not citing residents for violations was that it had been an oversight. One of the mobile homes (Exhibit 6) was located across from the park office, and the park manager admitted visiting the office at least twice daily. Another mobile home identified (Exhibit 13) (removed from the park at time of trial) was located directly across from the park manager's mobile home, which served as his residence.


R.C. 3733.13(D) contemplates uniform enforcement of park rules among all residents. Where a rule is not being enforced against other manufactured home park residents, a tenant may assert such failure to enforce rules uniformly as a defense to an eviction based upon two material violations of park rules.

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The court finds that testimony of the park manager clearly shows that the exposed hitch rule was subjectively enforced in this case, and Defendant properly availed himself of the defense outlined in R.C. 3733.13(D). The park manager has been employed at Highland Estates for a number of years and is familiar with the mobile homes in the park. The court is not willing to accept the park manager's "oversight" as an excuse where the evidence clearly shows that the rule has not been enforced uniformly against other manufactured home park residents.

The court denies Defendant's motion to dismiss at the close of Plaintiff's case. However, considering all the evidence and findings noted above, the court concludes that Plaintiff is not entitled to the relief sought in his complaint because of the affirmative defenses established by Defendant.

IT IS ORDERED AND ADJUDGED that the complaint against Defendant be dismissed with costs assessed to Plaintiff.


WILLIAM S. ALGE, JR.
FINDLAY MUNICIPAL COURT
ACTING JUDGE