

rule is "clearly inapplicable" if it would defeat the purpose of forcible entry and detainer, by failing to permit a speedy, summary method to recover the possession of real estate. Carroll v. O'Connor, 25 Ohio St. 617 (1874). Because time is of the essence in such actions, a civil rule which prolongs the proceedings is inapplicable. The present case demonstrates how applying Civil Rule 38 could cause such a delay. The filing of the jury demand on the afternoon before trial could have postponed the proceedings several days until the municipal court could assemble a venire. Because such a delay is possible under the rule but not the statute, the rule is clearly inapplicable. The three day limitation of R. C. §1901.24 must therefore be complied with in forcible entry and detainer actions, and the trial court correctly held that the jury demand in the present case was not timely filed.

Affirmed.

IN THE LIMA MUNICIPAL COURT OF LIMA, ALLEN COUNTY, OHIO

FILED

LIMA TOWERS,  
Plaintiff,

Case No: 96 CVG 00191

96 APR -8 PM 3: 1

ROBERT V. HOLMES  
CLERK OF COURT  
LIMA MUNICIPAL COU

-v-

BARBARA FRANKLIN  
Defendant.

MAGISTRATE'S REPORT  
&  
JUDGEMENT ENTRY

This cause came on for a trial before Magistrate Joseph H. Weir, II. Pursuant to a General Order of reference on February 7, 1996. All parties were present and a trial was held. Attorneys David DeLong for the Plaintiff, and Thomas J. Nanni, for the Defendant Barbara Franklin, requested to make closing arguments by submitting proposed findings of fact and conclusions of law. They were given until March 6, 1996 to do so.

The Magistrate being fully advised on the matter herein makes the following finding of fact and conclusion of law:

**Findings of Fact**

1. Defendant Barbara Franklin and Plaintiff, Lima Towers entered into a written lease agreement on or about September 26, 1994. This was a HUD contract.
2. Defendant's monthly rent share was \$127.00.
3. On September 29, 1996 (Friday) the Defendant had her purse stolen with her rent money during a macabre incident, involving her daughter and the daughter's boyfriend. (The daughter had been raped by her boyfriend, and when confronted by the Defendant, her daughter, and the police later that day, the boy friend committed suicide by cutting his throat. During this incident the Defendant's purse was stolen from her car, and a police report was filed.) Ms. Franklin reported this loss to the Plaintiff's manager, Lois Dullenbach, on Monday October 2, 1995.
4. The full amount of money owed for back rent and current rent was proffered, by the Defendant on November 1, 1995 and was refused by the Plaintiff.
5. From November 1, 1995 until this date the rent has been proffered numerous times and refused.
6. On November 21, 1995, the Plaintiff served the Defendant with a "NON-PAYMENT OF RENT LEASE TERMINATION NOTICE COMBINED WITH NOTICE TO VACATE PREMISES." ... "The grounds for termination are as follows: Non-payment of the following installments of rent Date Due October 1, 1995 Amount Due \$127.00"

8. All statutory requirements have been met for the Plaintiff to proceed with an eviction.

9. The issue in this case is the interpretation of the duty or responsibilities of both party during the 10 or 30 day Notice of Termination required under HUD regulations. Counsel for the Plaintiff insists that the Notice Requirement is merely a time extension to Ohio's 3-day notice under ORC Sec. 1923 Forcible Entry and Detainer section, whereas Defendant's counsel, makes the argument that the hearing suggested in the 10 day period has a due process requirement that the Plaintiff must consider.

**Conclusion of Law:**

The 3 premier cases, none of which is in this appeals district, and cited by counsel are *Crossroads Somerset LTD v Newland*, 40 Oh. App. 3d 20 (1987), *Cincinnati Metro. Housing Auth.* (1987), 41 Ohio App.3d 365; *Fairborn Apartments v. Herman* (1991) No 90 CA 28 (Ohio App. 2App. Dist); and finally, *Gorsuch Homes, Inc v. Wooten* (1992), 73 Ohio App.3d 426.

At the onset the perceived tension between State and Federal Law in these cases is bested summed up in *Gorsuch* at 433:

“One of the purposes of federally subsidized housing is to assure that every American can afford a decent home. The purpose of the requirement of the federal regulations and the lease agreement that a tenant must be afforded an opportunity to meet with the landlord to discuss a proposed termination of tenancy is to attempt to resolve the controversy in a mutually satisfactory manner, that will, if possible, avoid the tenant's loss of subsidized housing while protecting the rights of the landlord.”

and at 432:

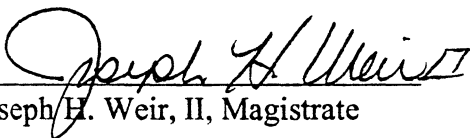
“The due process requirements of the 14th Amendment apply to private landlords who provide Section 8 federally subsidized housing for low-income tenants. The government action requirement for the application of the requirement of constitutional due process is satisfied by the substantial government involvement in financing new construction and rehabilitated housing, the rental assistance payments made directly to the owner by HUD on behalf of the tenant, the regulations imposed upon the owner by HUD, and the public function served by providing the housing. The tenant has a constitutionally protected property interest in continued occupancy of federally subsidized housing. A landlord cannot evict a tenant in Section 8 housing absent "good cause"; absent good cause for eviction, a tenant may remain in the housing for life, and the right to do so is a constitutionally protected property interest.”

This concept is contrary to Ohio Law where mere non-payment of rent is sufficient for eviction. However under Ohio law the government is not subsidizing the tenant, nor is the landlord receiving money from the government.

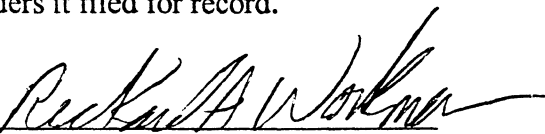
Non-payment of rent is a serious rental violation, regardless of whether rent is subsidized or not. Each HUD case must be handled separately and distinctly based upon their own facts, as indicated by the cited cases. In the case at bar the evidence shows extreme circumstances which the hearing requirement which was during the period November 21 through 3, if properly held, would have prevented a Forcible Entry and Detainer action from being instituted as the Defendant would have demonstrated that the extreme nature of the cause for her being late with the October rent and would have been able to tender full amount as requested.

Based on the foregoing, the Plaintiff's position that the 10 day notice requirement is a mere extension of Ohio's 3 day notice is without merit. Finally given the fact that a hearing is required, the present case law, and most importantly facts in the instant case, the Magistrate finds that the grounds for Forcible Entry and Detainer have not been met, and that the case should be dismissed.

**THEREFORE**, the Magistrate finds that the Plaintiff has failed to prove by a preponderance of the evidence the allegations of its complaint as to the first cause of action and that it should be dismissed with costs assessed to the Plaintiff. Second cause of action should be assigned for pretrial as established by the Assignment Commissioner.

  
Joseph H. Weir, II, Magistrate

After an independent analysis of the issues and the application of the rules applicable thereto, the Court finds that there is no error of law or other defect on the facts of the Magistrates Decision, and hereby approves the same and orders it filed for record.

  
Judge Rickard A. Workman

CLERK TO NOTIFY THE PARTIES

**THIS IS A FINAL APPEALABLE ORDER**