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JUL 1 1996  
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IN THE ZANESVILLE MUNICIPAL COURT  
ZANESVILLE, OHIO

EDWARD J. LABAKI :  
Plaintiff, : Case No. 96-CVG-00558  
vs. : JUDGE ZWELLING  
ROBERT & SARA CARTER :  
Defendants. : JUDGMENT ENTRY

This matter came before the Court on June 27, 1996, on the Complaint of the Plaintiff against the Defendants and occupants for restitution of premises and rent. The Plaintiff Edward J. Labaki appeared pro se and the Defendants Sara and Robert Carter appeared represented by Todd F. Lang. The Defendants moved to dismiss based on Plaintiff's noncompliance with R.C. Section 1923.04(A).

R.C. Section 1923.04 requires that at least three days notice be given a tenant prior to the commencement of an action in forcible entry and detainer. Beck v. Jolliff (1985), 20 OBR 128. Civil Rule 6(A) dictates that the three day period shall not include intermediate Saturdays, Sundays, and legal holidays. The purpose of the three day time period is to afford the tenant an opportunity to leave the premises on his own volition avoiding the necessity of an initiation of an eviction action. Proper service of this three day notice is a condition precedent to the beginning of an eviction action, and it is a separate jurisdictional step that must be completed before filing. Shimko v. Marks (5th Dist. Ct. App., 1993), 91 Ohio Appl.3d 458, 463).


The pleadings and the testimony of the parties reveals that the Plaintiff served the three day notice on the Defendant on June 4, 1996. The Plaintiff then commenced this action on June 7, 1996. The three day period is calculated by excluding the day of service and then counting the next three days. The following day, the fourth day, is the earliest date an eviction can be filed. Wintrow v. Smith (1987), 32 Ohio Misc.2d 12. Thus, pursuant to 1923.04(A) and Civil Rule 6(A), as the three day notice was served on June 4, 1996, the earliest date that this matter could have been filed is June 8, 1996. As June 8, 1996 is a Saturday, the fourth day would not actually take place until Monday, June 10, 1996.

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Plaintiff's Complaint was filed prematurely and is hereby dismissed without prejudice.

Court costs to Plaintiff.

IT IS SO ORDERED.

  
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JUDGE HOWARD S. ZWELLING

cc: Edward J. Labaki, 60 Shannon Avenue, Zanesville,  
Ohio 43701, Plaintiff  
Todd F. Lang, Attorney for Defendants