

IN THE MUNICIPAL COURT OF AKRON
SUMMIT COUNTY, OHIO

<p>Paul F. Hood, et al</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p>Mary Kusior, et al</p> <p style="text-align: center;">Defendant</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 97 CVG 3823</p> <p>Magistrate: Thomas F. Lynett</p> <p>MAGISTRATE'S DECISION WITH FINDINGS OF FACT AND CONCLUSION OF LAW</p>
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AKRON MUNICIPAL COURT
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FILED

This cause was set for hearing before Magistrate Thomas F. Lynett on the 4th of June 1997. Both parties were present in court and both were represented by counsel. At the conclusion of the testimony the court permitted the post trial briefs to be filed.

From the evidence presented by the parties the court finds the facts to be that Plaintiff's are the owners of premises, a multiple family dwelling, located at 598 Blaine Avenue Akron Ohio.

On or about December 7, 1993, Plaintiffs and Defendant entered into a rental agreement for the premises known as apartment #4. Initially, AMHA, through it's Section 8 existing housing program, paid \$351.00 per month and Defendant paid \$9.00 per month. This was subsequently amended and AMHA pays the entire rent.

On or about March 5, 1997, Plaintiff served their thirty day notice to vacate the premises to Defendant alleging that "due to your interference with the right of your neighbors to the peaceful enjoyment of their premises", that Defendant was in violation of ORC Section 5321.05. Subsequently, on April 16, 1997, Plaintiff served their statutory three day notice on Defendant. Plaintiffs filed the instant action April 29, 1997. Plaintiff's testimony centered around trash and

debris cluttering the hallway, common attic and basement areas and Defendant's behavior in annoying and disturbing the other tenants.

Defendant alleges that ORC 5321.05 states that tenants who have breached an obligation of ORC 5321.05 must be given notice pursuant to ORC 5321.11.

Defendant further alleges that ORC 5321.11 requires the written notice to the tenant specifying the act or acts that constitute non-compliance with the pertinent obligations and specifying that the rental agreement will terminate upon a date specified in the notice, not less than thirty days after the receipt of the notice.

The court agrees with Defendant's premise. Parker v. Fisher 17 O Ap 3d 103, states that where the tenant breaches an obligation in a written lease which action also constitutes a breach of tenant's duty under ORC 5321.05, the landlord must give a thirty day notice called for in ORC 5321.11 before commencing a forcible entry and detainer action.

In reading of ORC 5321.11 shows the requirement that the notice to the tenant must specify the act or omissions that constitute non-compliance with the obligations. The statute further states that if the tenant fails to remedy the condition specified in the notice the rental agreement shall terminate.

The court finds that Plaintiff's notice of March 5, 1997 failed to specify the act or omission which constituted the basis for the forcible detainer action. This failure of specificity denied Defendant the right to cure the act or omission. Plaintiff's notice also failed to list specified date of termination.

Based on the testimony and the evidence the court finds that Plaintiff's thirty day notice of termination failed to follow ORC 5321.11 as required and accordingly, it is the decision of the Magistrate that a writ of restitution not be allowed.

Magistrate: Thomas Lynch

JUDGMENT ENTRY

The decision of the Magistrate is approved.
It is the judgment of the Court that a writ of restitution MAY NOT issue.
Costs to be paid by the Plaintiff / Defendant.

Date: 9-22-97

Judge: [Signature]

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