

IN THE LANCASTER MUNICIPAL COURT
LANCASTER, OHIO

LANCASTER MUNICIPAL
COURT
1999 JAN 27 P 2:18

NAN BARNEBEY,

Plaintiff,

vs.

SEAN OLIVER, ET AL,

Defendants.

Case No. 99-CVG-00026

JUDGE MARTIN

JUDGMENT ENTRY

This cause came on for hearing on January 26, 1999, upon Plaintiff's forcible entry and detainer complaint. The Plaintiff was present in Court and represented herself. The Defendants Sean and Cindy Oliver were present in Court and were represented by Attorney Kris-Ann Stanley.

Defendants, through counsel, moved to dismiss the complaint on the grounds that the complaint was prematurely filed and the Court therefore lacked jurisdiction to entertain it. That is, under O.R.C. Section 1923.04(A) and the decision in Wintrow v. Smith, 32 Ohio Misc.2d 12 (1987), a forcible entry and detainer complaint cannot be properly filed until the expiration of the three day notice required by O.R.C. Section 1923.04(A).

The Court FINDS that the Plaintiff served the notice to leave the premises on the Defendants on January 4, 1999, and that Plaintiff filed her complaint herein on January 7, 1999. The Court further FINDS that the Plaintiff filed the complaint prematurely based upon the authorities cited above in that the three day notice had not expired as of the time that the complaint was filed. The Court further FINDS that, since proper service of a notice to leave the premises is a jurisdictional prerequisite to the commencement of a forcible entry and detainer action, the Court lacks subject matter jurisdiction to hear the complaint.

IT IS THEREFORE ORDERED that Plaintiff's complaint be and hereby is dismissed at Plaintiff's costs.

IT IS SO ORDERED.

Chris C. Martin

JUDGE CHRIS A. MARTIN