BOWLING GREEN MUNICIPAL COURT
515 E. Poe Road, P.O. Box 326
Bowling Green, OH 43402
(419) 352-5263

FILED
BOWLING GREEN
MUNICIPAL COURT

99 OCT 19 AM 9:23

MARY [illegible] WELL
CLERK OF COURT

Amhurst Village Management
1520 Clough Street
Bowling Green, OH 43402

Plaintiff

No. 99-CV-G-00936

DECISION On OBJECTION TO THE MAGISTRATE'S DECISION AND JUDGMENT ENTRY

vs.

Sara Vestal
Josh Myers
1520 Clough Street #148
Bowling Green, OH 43402

Defendants

This matter came on for hearing on the defendant's objection to the Magistrate's Decision. After review of the pleadings, the audio recording and the exhibits, and finding an oral hearing would be unnecessary;

The Decision of the Magistrate is adopted in full by the court.

ORDERED: The Plaintiff is granted judgment of eviction against defendant Sara Vestal for failure to pay rent for June through August, 1999. Plaintiff is granted a judgment of eviction by default against defendant Josh Meyers. The plaintiff is awarded a writ of restitution. Plaintiff has moved to dismiss its second cause of action and the same is dismissed. Costs to the defendants. **Clerk of Court:** File this judgment entry, serve copies to the parties and their counsel, and prove your service.

10/19/99

Mark B. Reddin, Judge

Journalized 10/19/99

Served on 10/19/99

Deputy Clerk of Court

This is a matter in forcible entry and detainer ("FED"), heard September 2, 1999, by Magistrate Thomas J. McDermott.

Plaintiff Amherst Village Management ("Amherst") is owner of an apartment complex located at 1520 Clough Street, Bowling Green, Wood County, Ohio. Defendant Vestal is a rent-subsidized tenant at the complex. Myers, a signatory to the lease, moved out of the apartment in May or June of 1999, and failed to appear in court for the instant proceeding. Therefore, all references in this decision to "defendant" are to Vestal.

Defendant Vestal, through counsel, made a motion to dismiss the action based on inadequacy of service. The Court took the matter under advisement, allowed the parties the opportunity to provide memoranda on the issue, and heard testimony in the FED matter. Defendant took advantage of the opportunity to support her motion by submitting a memorandum. Plaintiff apparently declined the opportunity. It is defendant's motion to dismiss that is considered here.

Pursuant to Ohio Revised Code §1923.06, which went into effect in March, 1999, service of summons in this case was made by the bailiff leaving a copy of the summons attached to defendant's residence ("posting") and by the issuance of a copy through ordinary mail. Vestal claims never to have received either. Defendant contends that the legislation authorizing such service is in abrogation of the Rules of Civil Procedure and therefore an improper usurpation by the legislature of a solely judicial function. Defendant would have this court follow the analysis of the Housing Division of the Cleveland Municipal Court, which so found in ***Talley v. Warner*** (1999), 99 Ohio Misc.2d 42.

Article IV, Section 5(B) of the Constitution of Ohio confers upon the Ohio Supreme Court the power to prescribe rules governing the courts of the state. The Supreme Court has promulgated the Rules of Civil Procedure which, in Rules 4 through 4.6, outline the procedures for service of summons and notice. However, Civil Rule 1(C)(3) provides that the Rules of Civil Procedure, to the extent that they would by their nature be clearly inapplicable, shall not apply to matters in forcible entry and detainer. Eviction actions, by their nature, are summary proceedings. As such, it is arguable that reliance on several attempts at personal service, followed by several attempts by the Post Office to perfect delivery of certified mail, would take an inordinate amount of time.

In ***Anderson v. Champer*** (May 13, 1999), Marion Municipal Court Case No. 99 CVG 00424, unreported, the court takes apart each of the points enunciated in ***Talley*** in finding that the new provisions of §1923.06 are not inappropriate. The Magistrate finds the ***Anderson*** analysis persuasive, and therefore finds that the provisions of §1923.06 for service by "posting" and regular mail is acceptable. The Magistrate would note however, that many landlord/plaintiffs, when filing an eviction action, also file a second cause of action for damages. The second cause is placed on the court's civil docket. Service in the action by posting and regular mail, while adequate for the eviction, ***would be imperfect service for the second cause*** as clearly violative of the Civil Rules. The Magistrate would therefore think that the prudent landlord/plaintiff would want to use personal or certified mail service from the outset to perfect service in both causes of

action.

Consideration must now be given to the testimony presented in the eviction action. Vestal claims that the apartment manager had knowledge of Myers leaving the residence at the end of May and therefore should have "re-certified" Vestal per Federal guidelines and adjusted her rent obligation downward for June. Management claims that they were not formally informed by Myers of his leaving until the first week of June. Landlord has still not re-certified Vestal

Defendant would have this court follow its decision in ***Amherst Village v. Bock*** (March 30, 1999), 99-CVG-00259, where eviction was denied based on failure to re-certify. The instant case, however, is distinguishable. Vestal did not make any proffer of rent for June (or, for that matter, since). Therefore, she owed the original amount for June. Landlord should, however, have initiated a re-certification procedure shortly after becoming aware that Myers was no longer was a resident in the apartment. As enunciated in ***Bock***, simply because a tenant is "under notice of eviction," the landlord is not therefore absolved from the need to re-certify for the remainder of any tenancy, since the eviction action may be contested and ultimately denied.

Therefore, based on the above, the Magistrate finds defendant Vestal in breach of the rental agreement for failure to pay rent for June through August, 1999. (Default judgment of eviction as to defendant Myers.) A writ of restitution will be awarded to plaintiff. Any consideration of costs is passed to the second cause of action, currently set for pre-trial conference on October 8, 1999, at 1:30 pm.

OBJECTIONS to this decision are controlled by Civil Rule 53(E)(3). A party may, within 14 days of the filing of this decision, file and serve written objections. If objections are timely filed and served by any party, any other party may file and serve written objections within 10 days of the date on which the first objections were filed. Objections shall be specific and state with particularity the grounds therefor. A copy of the objections must be mailed to all other parties. The court will not consider any objection that lacks the following proof of service: "Proof of Service. On (date) I mailed copies of this report to (names) at the address(es) shown in the Magistrate's decision. (Objector's signature)."

NOTE: Objections to this decision may ONLY be based upon A) the Magistrate's incorrect application of the law to the facts; or B) the Magistrate's finding was clearly contradictory to the evidence presented at trial. Should an objection be based on anything but these two conditions, it shall be invalid. Furthermore, evidence not presented at trial may not be submitted thereafter in the objections.

7/22/99

Thomas J. McDermott, Magistrate

deposit: $ 65-
Court Costs are: $ 65-