

IN THE LORAIN MUNICIPAL COURT
LORAIN COUNTY, OHIO

APT. MANAGEMENT, INC. : CASE NO. 05-CVG-650
Plaintiff, : MAGISTRATE D. CHRIS COOK
v. : MAGISTRATE'S DECISION
DEBORAH WOODS :
Defendants. :
:.....

Pursuant to Civ.R. 53, the Honorable Judges of the Lorain Municipal Court referred this matter to D. Chris Cook, MAGISTRATE, for hearing and decision. The parties to this matter will take note of the compliance requirements of Civ.R. 53(E)(1), (2), and (3).

This matter came on for contested hearing on May 2, 2005. Richard Miller, an agent for Plaintiff, Apt. Management, Inc., was present and represented by Scott F. Scrazin. Defendant, Deborah Woods, appeared and was represented by William Taylor.

At the conclusion of the testimony and evidence, the Magistrate requested the parties brief the legal issue regarding the sufficiency of Plaintiff's "Notice of Termination of Lease". The Magistrate has received and reviewed the parties' respective briefs and, based upon the pleadings, motions, affidavits, and other evidence submitted, makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

Because this matter can be resolved on procedural grounds, the court will not address the factual merits herein.

II. PROCEDURAL FINDINGS

This matter involves a tenancy regulated in part by Federal law, as the Defendant involved is a Section 8 Federally subsidized tenant.

On or about December 17, 2004, Plaintiff served a "Notice of Termination of Lease" upon Defendant, pursuant to paragraph 23(E)(2) of the lease, citing a number of violations of the tenancy. Thereafter, pursuant to R.C. 1923.04, Plaintiff served a three-day "Notice to Vacate." On January 14, 2005, Plaintiff filed its action in forcible entry and detainer. (See Case No. 05CVG0134.) As that case was improvidently brought by Plaintiff under the wrong name, Plaintiff dismissed the matter without prejudice.

On March 17, 2005, Plaintiff refiled its claim (the instant case) alleging the same violations of the leasehold. Prior to filing the second complaint, Plaintiff timely served a new R.C. 1923.04 three-day "Notice to Vacate." Plaintiff, however, did not serve a new "Notice of Termination of Lease" upon Defendant.

III. CONCLUSIONS OF LAW

The sole issue for determination by this court is whether or not Plaintiff was required to serve a new "Notice of Termination of Lease" upon Defendant when Plaintiff dismissed the first eviction complaint.

Plaintiff urges in its brief that by virtue of the dismissal of its first complaint, R.C. 1923.04 required the service of a new three-day "Notice to Vacate." Defendant agrees

with this statement of the law.¹ The parties differ, obviously, on the requirement that the "Notice of Termination of Lease" be re-served as well. Plaintiff urges that the Code of Federal Regulations is silent on the issue and, therefore, *expressio unius est exclusio alterius*, "the expression of one thing implies the exclusion of another." In other words, because the Code is silent on the matter, there is no requirement for re-serving the notice.

Defendant argues that as the voluntary dismissal of the first complaint extinguished the validity of the first three-day "Notice to Vacate," it contemporaneously terminated the validity of the "Notice of Termination of Lease" as well.

Both parties concede, and the court agrees, that this issue appears to be a matter of first impression. As such, the court must consider the matter *de novo*.

IV. DECISION

In the case at bar, prior to filing its complaint in forcible entry and detainer, Plaintiff timely filed both a "Notice of Termination of Lease" and a R.C. 1923.04 three-day "Notice to Vacate." Thereafter, Plaintiff dismissed its complaint without prejudice. Subsequently, Plaintiff re-served Defendant with a R.C. 1923.04 three-day "Notice to Vacate" but failed to re-serve Defendant with a new "Notice of Termination of Lease."

While the court is not guided by precedent in this matter; the cases cited by Plaintiff are illuminating but not controlling; and, both parties argue effectively for their position; the court finds the premises of law posited by Defendant to be persuasive. It is axiomatic that where a notice is required to be served in one instance, it must be served in

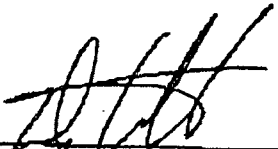
¹ Interestingly, nowhere in the text of R.C. 1923.04 is this requirement mandated. However, like the parties, the court believes that this is the correct interpretation of the statute, impliedly, though not expressly required.

another. Moreover, when a complaint is dismissed, for whatever reason, it is logical to assume that the defendant will conclude that the matter is over and that the plaintiff, should he wish to "resurrect" his allegations, must do so from scratch.

Accordingly, this court holds as a matter of law that where an action in forcible entry and detainer is dismissed, prior to refiling a subsequent action in forcible entry and detainer, any and all notices required by either statute or the contract at issue must be re-served by the Plaintiff upon the Defendant.

As a result of the foregoing, Judgment is hereby granted in favor of Defendant. Accordingly, the case is dismissed at Plaintiff's costs without prejudice.

IT IS SO ORDERED.



MAGISTRATE D. CHRIS COOK

cc: Apt. Management, Inc.
Deborah Woods