

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO  
JUDGE W. MONÁ SCOTT

MARVIN BEAVERS  
Plaintiff (s)

Date: December 18, 2020

-VS-

2020 CVG 009066

MARISSA PATAWARAN  
Defendant (s)

JUDGMENT ENTRY

This matter is before the Court on Defendant's Motion to Dismiss. The Defendant brings the Motion under Ohio Rules of Civil Procedure 12(B)(6) for Failure to State a Claim upon which Relief may be Granted.

A dismissal for failure to state a claim upon which relief can be granted pursuant Civ.R. 12(B)(6) is reviewed de novo since it involves a purely legal issue. *Bell v. Horton* (1995), 107 Ohio App.3d 824, 826, 669 N.E.2d 546. To dismiss a complaint for failure to state a claim, the Court must determine that a plaintiff cannot prove a set of facts in support of the claim that would entitle plaintiff to relief. *York v. Ohio State Hwy. Patrol* (1991), 60 Ohio St.3d 143, 144, 573 N.E.2d 1063. In making such a determination, the Court must presume that all of the factual allegations in the complaint are true and make all reasonable inferences in favor of the nonmoving party. *Id.* The court must also confine its review to the allegations contained in the complaint. See *State ex rel. Alford v. Willoughby* (1979), 58 Ohio St.2d 221, 223, 12 O.O.3d 229, 390 N.E.2d 782.

Defendant argues that she is entitled to dismissal of the First Cause because Plaintiff failed to serve Defendant with a thirty-day notice to vacate pursuant the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, Pub. L. 116-136 (2020) ("CARES Act"). Section 4024 of the CARES Act created a temporary moratorium on eviction filings for certain "covered properties" from March 27, 2020 to July 24, 2020. The CARES Act defines "covered properties" as properties that participate in the housing programs defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)). The list of federal programs found in section 41411(a) of the Violence Against Women Act of 1994 is included in section 8 of the Federal Evictions Moratorium Affidavit that Plaintiff filed with the Complaint in this matter.

After the moratorium expired, a landlord of a covered property "may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." CARES Act Sec. 4024(c). There is no expiration date attached to the thirty-day notice to vacate requirement in Section 4024 of the CARES Act. While one could make an argument

that the sunset date of December 31, 2020 found in Section 4029 of the CARES Act would control property under Section 4024, the Court does not need to take up that issue since that date has yet to pass.

Therefore, the Court must determine whether the property at issue was a "covered property" under the CARES Act and whether proper notice to vacate was given to Defendant by reviewing only the Complaint. Plaintiff filed a Federal Evictions Moratorium Affidavit with the Complaint, marked Exhibit D. Under section 8 of the Affidavit, Plaintiff made a checkmark next to "yes," indicating that the property participates in one of the listed federal housing programs. As stated above, the housing programs in section 8 of the Affidavit are included in the CARES Act definition of a "covered property."

Next, a review of the Complaint shows that Plaintiff served Defendant with notice to leave the premises on September 30, 2020 and filed the Complaint eight days later on October 8, 2020. Plaintiff also attached a Notice to Leave Premises to the Complaint, marked Exhibit A. The Notice states that Defendant has three days to vacate the property to prevent any legal actions.

After a review of the Complaint with the presumption that all of the factual allegations in the Complaint are true and finding all reasonable inferences in favor of the Plaintiff, the Court finds that the property at issue is a "covered property" under the CARES Act and that Plaintiff did not serve Defendant with the statutorily required thirty-day notice.

Having met the requirements of Civ. R. 12(B)(6), Defendant's Motion to Dismiss is granted. As this matter is dismissed in its entirety without prejudice, the Motion for Stay pursuant to the CDC Declaration is hereby deemed moot.

A. Deane Buchanan  
Judge W. ~~Moná Scott~~ *ASSIGNED*  
Housing Division

Service: Copies sent by regular U.S. mail to parties/counsel on 12/21/20 by AW.

☐ Clerk to issue notice of Final Appealable Order