IN THE NEWTON FALLS MUNICIPAL COURT
TRUMBULL COUNTY, OHIO

BLUE WATER MANOR	)	CASE NO.: CVG 2100003
	)	
Plaintiff	)	**JOURNAL ENTRY**
	)	
vs.	)	
	)	
LINDA REYNOLDS	)	
	)	
Defendant	)	

This matter came on for consideration of Defendant's Motion to Dismiss the Complaint pursuant to Ohio Civil Rule 12 (B) (6) on the grounds that the Complaint fails to state a claim upon which relief can be granted. Specifically, the Defendant alleges that the allegations in Plaintiff's Complaint, that the Plaintiff notified Defendant of a termination of tenancy and that therefore Defendant was a "hold-over tenant" and subject to forcible entry and detainer pursuant to Ohio Revised Code § 1923.01 et. seq. was insufficient under Ohio law to evict the owner of a manufactured home in a manufactured home park absent a default in rent or violation of reasonable park rules and/or Ohio law. The matter came on for oral hearing on February 24, 2021.

Facts

Defendant is the owner of a manufactured home, renting the lot upon which it sits from the Plaintiff's, at the present rate of $309.00 per month, plus utilities. Pursuant to the lease attached to the pleadings, the rent was actually $317.00 per month, starting on September 1, 2019 for a period of one year. Ohio law, R.C. § 4781.40 requires a park operator to offer a subsequent one-year lease at the end of each one-year lease. The Plaintiff gave notice offering to renew the yearly lease and instructed Defendant that she would be required to notify the Plaintiff of her decision to renew the one-year lease on or before April 1, 2020, approximately five

months prior to the end of the lease term. Defendant declined and beginning on September 1, 2020 became a "month-to-month tenant". However, the terms of any month-to-month lease are essentially the same as the terms for a yearly lease. (See Ohio Revised Code 4781.40 (A) (1).

On October 16, 2020 Plaintiff sent a thirty-day notice to terminate the rental agreement, effective November 30, 2020, pursuant to Revised Code § 5321.17, Ohio "landlord–tenant law". The Defendant did not remove her home and on or about December 10, 2020 Plaintiff served on Defendant a three-day notice to vacate pursuant to Ohio Revised Code §1923.04; when Defendant failed to vacate, this Forcible Entry and Detainer (F.E.D.) action was filed, on January 6, 2021. Defendant was current in rent throughout that period and has tendered rent thereafter; there were no violations of park rules nor Ohio law alleged. As such, as indicated above, Defendant filed this Motion to Dismiss arguing that the Complaint fails to state a claim upon which relief can be granted, pursuant to Ohio Civil Rule 12 (B) (6).

The law argued by Defendant is that pursuant to Ohio Revised Code § 4781.36 - 4781.57, Plaintiff, a mobile home park operator, cannot evict the owner of a manufactured home from its lot without a "material violation of rules", a violation of Ohio law and/or non-payment of rent. The Plaintiff responded in part that the Complaint contains and adequate "short plain statement of the claim" and consequently, in effect, the motion is premature – evidence adduced at the eviction hearing in support of Plaintiff's claim that the Defendant was a "hold-over tenant" would support a judgment in Plaintiff's favor.

Conversely, at oral hearing on the matter, and in response to the Court's direct question on that issue, Plaintiff's counsel agreed that there would be no additional evidence offered of any rule violation, violations of law or the non-payment of rent – rather Plaintiff was proceeding strictly on the basis that under Ohio's landlord/tenant law, R.C. § 5321.01 et. seq., they can

terminate a "month-to-month tenant" by providing the thirty-day notice of termination; if the tenant fails to move, the Plaintiff can then begin eviction procedures pursuant to O.R.C. 1923 and serve a three-day notice to vacate, followed by the Forcible Entry and Detainer action if the Defendant "holds-over".

Law

Ohio Revised Code § 4781.26 – 4781.57 governs the relationship between manufactured home parks (formally "trailer parks" or "mobile home parks"), and its "residents" – which include both "tenants", those that rent the home and the lot, and "owner", those that own the mobile home and rent only the lot of land. See Ohio Revised Code 4781.01 (T), (U) and (V). Those statutes, in conjunction with Ohio Administrative Code (O.A.C.) §§ 4781 – 12 – 01 to 4781 – 12 -32, govern the promulgation of rules and regulations, health and safety codes, charges for the fees/costs, notifications to be given under various circumstances and in the case of the sale of the park as well as the duties and obligations of both the park operator and the residents regarding care and maintenance of the property, among other things. Finally, the statutes govern prohibitions against retaliation, 4781.36 and sets forth permissible bases to evict residents from the park, 4781.37, and damages for violations, 4781.46. Pursuant to 4781.37 the park can evict if the resident is, in pertinent part:

- the resident is holding over the residents' term,

Conversely, R.C. 4781.45 restricts the park operator's ability to terminate a rental agreement without following specific procedures.

The question in this case, is – when does a mobile home owner become a "hold-over tenant?

In *Schwartz v. McAtee*, (1986) Ohio St.3d 14, the Ohio Supreme Court, interpreting Ohio Revised Code § 3733.01 et. seq., the predecessor statute to Ohio Revised Code 4781.01 et. seq., specifically held:

1. R.C. chapter 5321 does not govern the relationship between manufactured home park operators and their tenants.

2. A tenant in a manufactured home park cannot become a holdover tenant unless he fails to fulfill an obligation imposed by R.C. § 3733.101, provided it materially affects health and safety, the park operator gives tenant written notice of non-compliance in accordance with R.C. § 3733.13, and tenant fails to remedy the non-compliance by the date specified in the notice which shall not be less than thirty days.

3. A manufactured home park operator cannot successfully maintain an action in forcible entry and detainer against a tenant unless the tenant has defaulted in the payment of rent and/or breached the terms of his rental agreement. (R.C. 1923.02 (A) (10) applied.) Syllabus paragraphs 1-3.

In Schwartz, the Ohio Supreme Court recognized the reality of the modern mobile home park as not being "mobile" at all – and that the General Assembly, recognizing "the growing population of manufactured home living" enacted legislation regulating the relationship between manufactured home landlords and their tenants. The Court also recognized the "formidable restrictions on the ability of a manufactured home park operator to evict tenants - "restrictions...made necessary by the formidable differences between apartment or conventional house tenants and manufactured home tenants". *Id.* pages 17 -18.

In that case, as here, the "tenant" owned the home and was a "month-to-month" tenant, current in rent but had violated the park rules regarding dog ownership. The park gave Defendant a thirty-day notice to remove the dogs, per the subject statute, but Defendant failed to comply. There, utilizing the language of the statute, the Court held that Plaintiff's could not

evict the Defendant without demonstrating violation of the rules that "materially affected health and safety".

Subsequently, the 11th District Court of Appeals, in *Hamlet Mobile Home Park v. Sigmund*, (1997) 118 Ohio App.3d 29, noted the amendment to the statutes (3733.01 et. seq.) no longer required a showing that a rule violation materially affect health and safety of other tenants. There, again, the tenant was the owner of a manufactured home, renting a lot from the Plaintiff on a month-to-month tenancy. The park notified the Defendant that she was in violation of park rules for a second time within six months, the first violation in November 1994 and the second in February 1995. The park thereafter served a three - day notice to vacate and filed the Forcible Entry and Detainer action when Defendant failed to move. The Trial Court, referring to Schwartz, *supra*, held that because there were no material violations affecting "health and safety" that the Forcible Entry and Detainer could not proceed and dismissed. The 11th District Court reversed, holding that pursuant to the amended statute that an action in Forcible Entry and Detainer will lie if the resident of a mobile home park has committed two violations of park rules within six months, without the need to show that the violations affect the health and safety of other tenants. However, the Plaintiff would still be required to show that there were two material violations of the park rules (see R. C. 4781.45).

Finally, in *Thompson v. KMV II, Ltd. D.B.A. All Seasons Park*, (2003) WL 943871 11th Dist., the Court again addressed the issue of a mobile home park F.E.D. action with regard to the owner of a mobile home. In that case the homeowner was notified that he was in violation of the park rules regarding registration of a pet and he had thirty days to correct the situation. After the thirty days passed and the Defendant failed to correct the situation the park filed the Forcible Entry and Detainer action. The Trial Court denied the writ, stating the law required two material

violations within six months. The 11th District reversed holding that, as set forth in the statute, if there is one material violation and the park notified Defendant of same with the thirty - day notice to cure, but the Defendant failed to cure said defect, the park operator could then proceed with eviction procedures. The Court held you need not show a second violation within six months if the Defendant fails to cure the first within the allotted time. The case was remanded, again with instruction to the Court to determine whether the violation was "material".

The significance of the holdings in the Schwartz, Hamlet and Thompson cases, *supra*, is that to evict month - to - month tenants who owned their mobile home, the park operator was required to show material violations of rules, law and/or non-payment of rent. If the Plaintiff here was correct in its assertation that O.R.C. 5321.17 controls, those park operators would have merely had to send a thirty-day notice to terminate the month-to-month tenancy and the rule violations argued in those cases, and set forth in the statutes, would have been irrelevant.

In Schwartz, *supra*, the Ohio Supreme Court, in resolving the apparent conflict in the statutes explained:

> When read in *pari materia*, the provisions of § 1923.02 in no way limit the remedy granted to mobile home park operators in § 3732.091 (the predecessor to 4781.45). In effect, § 1923.02 provides for additional use of forcible entry and detainer under the provision of section A (10). The (Appellate Court) reading of § 1923.02 renders nugatory and without meaning § 3733.091 (A)(3) (4781.45); such an effect always should be avoided.
>
> The Court of Appeals correctly determined that R.C. 1923.02 and 3733.091 related to the same subject and should, therefore, be construed together, in *pari materia* (citation omitted). The Court of Appeals, however, failed to recognize the statutes read in *pari materia* should be reconciled, if possible (citation) so as to render their contents operative and valid. (citation omitted). While the Court of Appeals gave full form and effect to R.C. 3733.091 and 1923.02 (A)(1), it rendered R.C. 1923.02(A)(10) nugatory and without meaning.
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> While on their face R.C. 1923.02 (A)(10) and 3733.091 (A)(3) appear to be in conflict, they are not. As set forth above, the sections can be easily, reasonably

and logically harmonized and, where possible, it is a court's responsibility to do so. (citation omitted). *Id.* at 20 – 21.

It is clear that R. C. 4781.36 – 4781.52 controls evictions of mobile home park residents who own their home. If the park operator can show non - payment of rent or a violation of reasonable park rules and/or Ohio laws, and fail to cure, the operator can then take steps to terminate the tenancy. If the resident refuses to vacate, the park operator can proceed with an eviction under R.C. 1923 and/or R.C. 5321.01 et. seq., as the resident would then be "holding-over".

In the case at bar, the Plaintiff agrees there were no violations of the park rules or Ohio law nor was the Defendant in default in rent. Plaintiff's argument that because the Defendant was a month-to-month tenant, Plaintiff is merely required to provide a thirty-day notice that it was terminating the tenancy pursuant to Revised Code 5321.17, ignores the case law and eliminates any requirements and restrictions of R.C. 4781.

Therefore, based on the foregoing, Defendant's Motion to Dismiss this case is granted.

This is a final appealable order.

IT IS SO ORDERED.

3/11/21
DATE

JUDGE PHILIP M. VIGORITO

NEWTON FALLS MUNICIPAL COURT TRUMBULL COUNTY, OHIO

The Clerk is ordered to serve copies of this Order on all parties and/or counsel.

FILED
Newton Falls Municipal Court
MAR 11 2021
By RB