

IN THE LICKING COUNTY MUNICIPAL COURT

LUCKING CO. COURT

2003 APR 25 AM 8 09

Cherry Lee Apartments,

Plaintiff

vs.

NEWARK OHIO
COURT CLERK
Case No. 03CVG00510

Cheryl Walcott, et al,

Defendant

JUDGMENT ENTRY

This is a forcible entry and detainer case. The Tenant resides in federally subsidized housing owned by the Plaintiff/Landlord. Procedurally, the case has taken the following path.

On February 13th the Defendant was served with a notice to leave the premises. The notice informed the Defendant the tenancy was terminated and she was to leave on or before February 27, 2003. The grounds for termination were contained in the notice as follows:

1. Material compliance with the rental agreement and
2. Criminal activity . . .

On the 6th day of March the Tenant was served with an additional notice to leave the premises. This notice specified the grounds as non-payment of March 2003's rent. The notice gave the Tenant ten days to vacate. Thereafter, on March 12, 2003 Plaintiff filed their complaint seeking restitution of the premises. Preliminary issues before the Court involve both legal and factual matters. An analysis of the legal issues is dispositive of this case.

The Court must first determine whether it has jurisdiction to hear the forcible entry and detainer matter. It is clear that certain procedural requirements must be met to establish jurisdiction in the Court. In this case the Defendant argues that deficiencies in the required notices operate to deprive the Court of jurisdiction. The Court agrees with this

Judge
Michael F. Higgins

Judge
Thomas M. Marcelai

40 W. Main St.,
Newark, O. 43055

740-349-8840
740-349-8852

argument and has determined that it lacks jurisdiction to proceed inasmuch as the notices served upon the Defendant/Tenant are fatally defective.

The second in time notice to vacate dated 3/6/03 contains the proper statutory language. However, it is in no way bold-faced or otherwise distinguishable from other verbiage on the notice. Section 1923.04 requires that the following language be printed or written in a conspicuous manner on a notice to vacate the premises. "You're being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you're in doubt regarding your legal rights and obligations as the tenant, it is recommended you seek legal assistance." The notice in question, namely Plaintiff's Exhibit F, does not place this language in a conspicuous manner. It is interesting to note that the Plaintiff's first in time termination notice does contain the proper language and it is bold-faced and capitalized in a conspicuous manner. The Court believes that this second notice then is jurisdictionally defective, *Owner's Management Company v. Willis*, 88 L.W.O. 614, 6th District Court of Appeals, and *Dayton Metropolitan Housing Authority v. Russell (1980)*, 16 Ohio Ops.3d 94.

Moreover, the Court believes that notice is jurisdictionally defective because it purportedly gives the Defendant ten days to vacate. However, this action was filed on March 12, 2003, less than six days following the deliverance of the ten day notice to leave the premises (Plaintiff's Exhibit F). *Sternberg v. Washington*, 113 Ohio App 216 (1960), and *National Church Residences of Worthington v. Timson*, (1992) 17 Ohio App 3d 798.

The termination notice of February 13, 2003 also fails to meet the minimum requirements of the lease agreement entered into between Plaintiff and Defendant. Specifically, Section 23 of said lease agreement provides in pertinent part that all termination notices must contain language that would advise the Tenant that he or she has ten days within which to discuss the proposed termination of the tenancy. This defect in the notice, the Court believes, cannot be corrected by having that required language in the subsequent notice delivered March 6, 2003. The Court believes this since to argue that the second notice constituted the beginning of her ten day period in which to discuss the proposed

termination flies in the face of the fact that the lawsuit was filed less than six days later. Accordingly' based upon defects in the notices the Court believes it lacks jurisdiction to proceed. Moreover' assuming the Court has jurisdiction to proceed, the Court finds that the Plaintiff failed to prove by a preponderance of the evidence that the Tenant, or her guests, or any other person under the Tenant's control, engaged in any criminal activity.

Accordingly, the case is dismissed with costs to the Plaintiff.



Judge Michael F. Higgins

A

Jackie L. Hager, Attorney for Plaintiff
Robert R. Romaker, Attorney for
Defendant