

BOWLING GREEN MUNICIPAL COURT
711 S. Dunbridge Rd.
Bowling Green, OH 43402-0326
(419) 352-5263

FILED
BOWLING GREEN
MUNICIPAL COURT

2006 JUN 15 P 3:18

MARY A. COWELL
CLERK OF COURT

**BOWLING GREEN MUNICIPAL COURT
WOOD COUNTY, OHIO**

Richard C. Elder
720 Circle Dr.
Fostoria, OH 44830

Plaintiff

No. 06-CV-G-00752

v.

MAGISTRATE'S DECISION

Richard H. Elder
11310 Blackman Rd.
Bradner, OH 43406

Defendant

John D. Noble
101 Crystal Ave.
Findlay, OH 45840
Attorney for Plaintiff

Mary Ellen Natale
Legal Aid of Western Ohio
520 Madison Ave. Suite 640
Toledo, OH 43604
Attorney for Defendant

Plaintiff is the trustee of the Richard C. Elder Irrevocable Living Trust for Genevieve Elder (his mother, deceased in 1999). The only remaining asset of that trust is Genevieve Elder's house, located at 11310 Blackman Road, Bradner, Ohio.

Defendant is plaintiff's son. Defendant has been living in Genevieve's house since July, 1999. Defendant's agreement with plaintiff was that defendant would pay the property taxes, the insurance and the utilities; and maintain the premises. This arrangement was not memorialized in a writing. In fact, the only thing in writing during this whole time (at least that was produced in court), was a three-day notice to vacate served by plaintiff on defendant in April and then again in May, 2006. The notice to vacate cites as grounds for eviction "destruction of property; storage of junk cars; failure to pay rent."

There was testimony by plaintiff that he had verbally told defendant at least twice, in late 2005 and early 2006, that he wanted him out. Defendant testified that "he was always saying that."

The situation *sub judice* is clearly a tenancy at will which, by definition, "continue[s] only so long as all parties to it mutually agree. The tenancy at will necessarily implies that the arrangement is terminable at the will of either the lessor or the lessee. Reasonable notice to terminate is presumed." White, *Ohio Landlord Tenant Law*, 2006 Edition, p. 42.

The parties made various arguments as to the grounds as listed in the notice to vacate, but the magistrate believes that these arguments go more to the second cause of action. The issue at hand is one of notice to terminate the tenancy, which must precede a notice to vacate.

A landlord clearly has the right to terminate a tenancy at will at any time, with reasonable notice to the defendant. If the tenant does not vacate, then a three-day notice to vacate is served prior to the commencement of an eviction action.

In this case, there was no clear, unequivocal, notice from landlord to tenant to terminate the tenancy. (Written, of course, would be best.) What we seem to have here is more along the lines of father and son bickering, yelling, threatening each other without invoking the formalities of a landlord/tenant relationship. Without that notice to terminate, the notice to vacate was premature.

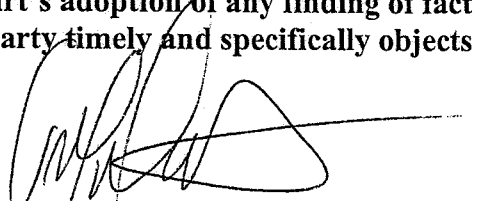
Normally, the period of the payment of rent (i.e., monthly), is the guideline for the length of "reasonable notice" required to terminate a tenancy. Since there is no payment of rent in this situation, defendant believes that "reasonable notice" of termination of the tenancy in this matter would be six months, as that is the period of property tax payments, which was one of the conditions of the tenancy. One of the other conditions was payment of utilities, which is normally done monthly. It would seem, therefore, that thirty days would be just as reasonable.

Based on the above, the magistrate finds that reasonable notice to terminate the tenancy was not given to the defendant. Therefore, the first cause of action is dismissed.

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 therefore. 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 [name(s)] 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. A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law in this decision unless the party timely and specifically objects to that finding or conclusion.

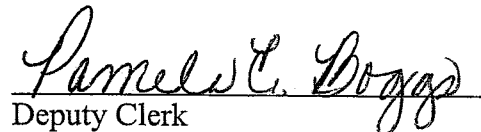
6/15/06



Thomas J. McDermott, Magistrate

Deposit: \$ _____
Court Costs: \$ _____
Plaintiff Owes: \$ _____
Defendant Owes: \$ _____
Pay to ___ Plaintiff ___ Defendant

On 6/15/06, copies mailed.



Deputy Clerk