

BEREA MUNICIPAL COURT
FILED

2011 NOV -4 A 9:14

RAYMOND J. WOHL
CLERK OF COURT

IN THE BEREAMUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

GMS MANAGEMENT CO., INC.

Plaintiff

v.

MAZEN ALNAZER, et al.

Defendants

CASE NO.: 11 CVG 02425

MAGISTRATE'S REPORT AND
RECOMMENDATION

This matter came before the Court on a First Cause of Action involving an eviction of a residential unit.

Plaintiff presented its case which included the following facts:

(1) Plaintiff served a three (3) day notice to leave premises upon the defendants on Wednesday, October 5, 2011.

(2) Plaintiff filed its Complaint on Tuesday, October 11, 2011. Defendants moved to dismiss the First Cause of Action due to the failure of proper service of the three (3) day notice, to-wit: the Complaint was filed one (1) day too soon.

The parties were granted leave to file a brief regarding this matter.

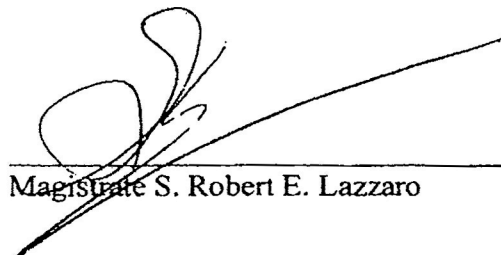
After review of the briefs, the facts and the law, the Court finds that O.R.C. § 1923.04 and O. Civ. R. 6 are relevant to this matter in that service of a three (3) day notice is required before an eviction complaint can be filed and that the service day as well as intermediate Saturdays,

Sundays and legal holidays shall be excluded in the computation of days. See, *Midtown Apts. v. Davis*, 20 Ohio B. 128, 1985 WL 6044 (Ct. App. Franklin Cty. 1985); *McCallister v. Pickrel*, No. 02-CVG-00268 (Mun. Ct. Licking Cty. Mar. 12, 2002); *Labaki v. Carter*, No. 96-CVG-00558 (Mun. Ct. Zanesville, July 1, 1996); *Will v. Stiller*, No. 90-CVG-1248 (Mun. Ct. Painesville, Sept. 19, 1990); *Bezon v. James*, No. 89-CV-G&F-1957 (Mun. Ct. Alliance, Feb. 5, 1990); *Spero v. Killeen*, No. 7-89-CVG-302 (Mun. Ct. New Philadelphia, Aug. 31, 1989); *Winthrow v. Smith*, 32 Ohio Misc. 2d 12, 513 N.E. 2d 363 (Mun. Ct. Akron 1987); *Bowers v. Starcher*, No. 87-CL-254686 (Mun. Ct. Springfield, July 11, 1987); *Shakaran v. Smith*, No. 86-CVG-1159 (Mun. Ct. Elyria, May 21, 1986); *Northpointe Apts. v. Dooley*, No. M85-CVG-3909 (Mun. Ct. Franklin Cty. Apr. 8, 1985). See also, *Barnebey v. Oliver*, No. 99-CVG-00026 (Mun. Ct. Lancaster, Jan. 27, 1999) (follows *Winthrow*).

Such being the case, this Court holds that the Complaint was filed one (1) day too soon (Columbus Day, a legal holiday, was October 10, 2011. The defendants' motion to dismiss is granted and the First Cause of Action is dismissed, without prejudice at the plaintiff's costs.

The Second Cause of action remains pending.

November 4, 2011



Magistrate S. Robert E. Lazzaro

Raymond J. Wohl
Clerk of Court

JUDGMENT ENTRY and ORDER
(FIRST CAUSE OF ACTION)

Deputy Clerk

JUDGE MARK A. COMSTOCK