

FILED
LICKING COUNTY
MUNICIPAL COURT

2021 NOV -1 AM 10:51

IN LICKING COUNTY MUNICIPAL COURT
LICKING COUNTY, OHIO

NEWARK OHIO
MARCIA J. PHELPS
CLERK

BARBARA KASEMAN

:

Plaintiff,

:

Case. No. 21CVG02194

vs.

:

Magistrate Brown

RALPH MADDUX

:

JUDGMENT ENTRY

Defendant.

:


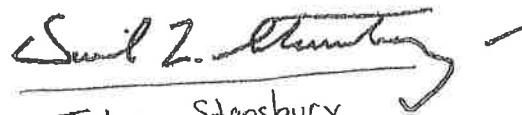
Defendant's Motion to Dismiss has come before this court and is well-taken. This court lacks jurisdiction to proceed in this matter due to an improper three-day notice. The lease in this matter created a month-to-month tenancy. Under O.R.C. section 5321.17 the termination of such a tenancy requires a thirty-day notice given at least thirty days prior to the rental term. A thirty-day notice of termination was given to Defendant on August 25, 2021. This notice is at least thirty days prior to the beginning of the October 1st rental period. This means that Defendant's tenancy does not end until October 1st.

Plaintiff served a three-day notice as required by O.R.C. 1923.04 on September 27, 2021 before the ending of the tenancy. Under that statute, a premature three-day notice, meaning served prior to the end of the tenancy, is improper. "[P]roper service of the three-day notice is a condition precedent to the court taking jurisdiction over an eviction proceeding." *Godbelt v. McClain*, 5th Dist. Licking No. 94-CA-0066, 1995 WL 768531. This court lacks jurisdiction to proceed in this matter for improper service of the three-day notice.

IT IS SO ORDERED.


Magistrate Brown

Proposed By:


Hannah Wagner (100625)
Counsel for Defendant
Judge Stansbury

Licking County Municipal Court
Newark, Ohio

LICKING COUNTY
MUNICIPAL COURT

2021 OCT 27 AM 11:35

BARBARA KASEMAN
Plaintiff(s)

vs

Case # 21CVG02194

MARCI J. HELPS
CLERK

FRED MADDOX,
Defendant(s)

MAGISTRATE'S DECISION

Plaintiff(s) represented by _____

Defendant(s) represented by ANNAH WAGNER

Case called for trial at _____ (A.M.)(P.M.) Plaintiff(s) appeared. Defendant(s) failed to appear. Based on the evidence presented, the Magistrate finds that the Notice to Vacate conforms to R.C. 1923.04 and was properly served, and that Plaintiff(s) has proven non-payment of rent and the allegations set forth in the complaint by a preponderance of the evidence. Judgment for Plaintiff(s) for restitution of the premises and costs.

Case called for trial Plaintiff(s) and Defendant(s) _____ appeared. Based on the evidence presented, the Magistrate finds that the Notice to Vacate conforms to R.C. 1923.04 and was properly served, and that Plaintiff(s) has proven non-payment of rent and allegations set forth in the complaint by a preponderance of the evidence. Judgment for Plaintiff(s) for restitution of the premises and costs.

Case called for trial at _____ (A.M.)(P.M.). No one appeared. The (first cause)(case) is dismissed at Plaintiff's costs.

Case called for trial at _____ (A.M.)(P.M.) Defendant(s) _____ appeared. The (first cause)(case) is dismissed at Plaintiff's costs.

Reassign for service as to Defendant(s) _____

Based on information supplied by Plaintiff(s), the (first cause)(case) is dismissed without prejudice.

☒ Other SEE ENTRY ATTACHED

NOTICE: A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R53(D)(3)(iii), unless the party timely and specifically objects to that factual finding or legal conclusion, as required by Civ. R 53 (D)(3)(b).

10-27-21
Date

[Signature]
Magistrate

NOTICE: The issue of monetary damages will be heard at a later date, provided the plaintiff has accomplished service on the defendant by personal service or by certified mail service and if unclaimed by regular mail service. Posting of the summons does not meet the legal requirement for seeking monetary damages.