

IN THE FRANKLIN COUNTY MUNICIPAL COURT, COLUMBUS, OHIO

Community Gardens Park and Sales, :  
Inc., :  
Plaintiff, :  
v. : Case No. M-81-09-CV-G-027176  
Dale Roe, et al :  
Defendants. :

This cause came on for hearing before Referee Susan E. McNally on October 6, 1981, in the Forcible Entry & Detainer Division on the issue of possession of the premises only upon plaintiff's complaint and defendants' answer.

Both parties were represented by counsel and a court reporter was present at the hearing.

This case involves an action for eviction from a trailer park which is governed by O.R.C. 3733.09 through O.R.C. 3733.20 enacted in 1978 to govern Landlord Tenant Rights specifically concerning housetrailer parks. The problems of housetrailer evictions are unique in that the tenant is not only evicted but the dwelling is also, at considerable expense to the tenant.

Plaintiff filed an eviction action based on violation of certain rules of the park. §3733.091 allows the park operator to evict under Chapter 1933 if (1) defendant is in default of rent, (2) tenant has violated a housing or safety code, (3) defendant is holding over his term or (4) violation of rules promulgated by the public health counsel. O.R.C. 1923.02(10) allows eviction for violation of terms of the rental agreement subject to the defense of retaliation.

Plaintiff alleged in his complaint that the grounds for the eviction were violation of certain park rules. The referee is not convinced by a preponderance of the evidence that in fact these rules were violated. The only proven violation of any rules was a housing code violation of an exposed exterior electrical cable from the box to defendants' trailer. The housing inspector testified that he noted this violation to the park operator not to the defendant.

The parties are in dispute as to who has responsibility for this violation. It is not covered in the park rules. Because the housing inspector directed it to the park operator the Referee finds that it is his responsibility to bury the cable.

While the only grounds for eviction alleged in the complaint were violations of park rules, plaintiff presented testimony that defendants were holding over their term. A 30-day notice was given to defendants to vacate on July 28, 1981, and a 3-day notice was delivered September 17, 1981. Since these grounds were not alleged they shall not be considered pursuant to O.R.C. 1923.05. However, a careful reading of Chapter 3733 brings this referee to the conclusion that the park operator must have grounds to evict the tenant and cannot merely terminate a month-to-month tenancy by delivery of a 30-day notice. O.R.C. 3733.17 limits the operator's right to possession to those rights found in Chapters 1923, 3733 and 5303 exclusively. Termination of a month-to-month tenancy by 30-day

notice is found only in Section 5321.17(B) which is not applicable. The legislative intent of 3733.17 is to establish a greater degree of permanency to the trailer park operator-tenant relationship considering the expensive commitment involved on the part of the tenant. Plaintiff's attorney claims this is unconstitutional but no reported challenges have been litigated to date.

Defendants raise the defense of retaliation in this action. It is certainly questionable that defendants called the housing inspector who appeared the same day the 3-day notice was served. Plaintiff's park operator testified the notice was typed prior to his arrival but not prior to plaintiff's knowledge of the complaint. Defendant further testified that the park operator put new gravel in every driveway in the park but theirs. The conduct of the park operator rises to the level of retaliation.

In settlement of this case, defendants have put their trailer on the market and have prospective buyers. Plaintiff denied them the right to sell the trailer and demands eviction as a cost of \$2,000.00 to defendants if the trailer is moved in Franklin County. O.R.C. 3733.11(H) prohibits a park operator from dehying sale of the trailer on the site and requires a one year lease to the new occupant if reasonable.

"(H) No park operator shall:

- (1) Deny any tenant the right to sell his house trailer within the house trailer park if the tenant gives the park operator ten days notice of his intention to sell his house trailer;
- (2) Require the tenant to remove the house trailer from the house trailer park solely on the basis of the sale of the house trailer;
- (3) Unreasonably refuse to enter into a rental agreement with a purchaser of a house trailer located within his house trailer park."

O.R.C. 3733.11(H)(1)(2)(3).

It would appear that sale of the trailer on the lot is the most reasonable settlement to this conflict.

REFEREE'S RECOMMENDATION:

Judgment for defendants on the issue of possession only.

  
REFEREE SUSAN E MCIALLY

Copies to:  
Norman F. Miller, attorney for plaintiff  
John R. Dennis, attorney for defendant