

Northpointe Apartments,  
Plaintiff,

FILED

*MA Taylor*  
1985 APR -8 AM 11:50

-v-

David Dooley,  
Defendant.

Case No. M'85CV G 3909

REFEREE'S REPORT

This cause came on for hearing before Referee Susan E. McNally on plaintiff's complaint in forcible entry and detainer.

Plaintiff appeared represented by William Gehrett Huddle, Attorney at Law. Defendant failed to appear personally but appeared through his attorney Michael Kirkman, Attorney at Law.

Defendant moves to dismiss the case as prematurely filed after service of the notice to leave the premises pursuant to Revised Code 1923.04. From the sworn testimony taken the Referee finds as follows:

FINDINGS OF FACT

1. Susan Zigler testified on behalf of the plaintiff that the defendant failed to pay rent for February of 1985. On February 6, 1985 a 3-day notice was delivered pursuant to Revised Code 1923.04. The action in forcible entry and detainer was filed on February 11, 1985.

2. There was further evidence that the rental office is open for business on Saturdays and accepts rent on Saturdays.

CONCLUSIONS OF LAW

The Court concludes that the plaintiff filed this action prematurely and that the requirements of Revised Code Section 1923.04 are jurisdictional requiring that the issue of possession be dismissed.

The Court of Appeals of Franklin County has recently addressed this issue in the case of Midtown Apartments v. Vanessa Davis, Unreported Case No. 84AP-1121, March 26, 1985. In that opinion Judge Whiteside stated that Revised Code Section 1.14 provides a method for computing time and that Civil Rule 6A also provides a method for computing time regarding this issue. The Court did not specifically say that the civil rule applied but stated in dicta "Plaintiff has not demonstrated any basis upon which this Court could properly find that Civil Rule 6A is clearly inapplicable with respect to the 3-day notice requirement of Revised Code Section 1923.04 governing forcible entry and detainer actions." Under Civil Rule 6A periods of time less than 7 days exclude intermediate Saturdays, Sundays and legal holidays in computation of time. Since the first day is not counted, the tenant was allowed the seventh and eighth to vacate the property prior to the filing of an action and also had to be allowed the eleventh in order to be allowed a full three days under Civil Rule 6.

RECOMMENDATION

First cause of action dismissed at plaintiff's costs.

*Susan E. McNally*  
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REFEREE SUSAN E. MCNALLY

William Gehrett Huddle, Atty. for Plaintiff  
Michael Kirkman, Attorney for Defendant