

CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO  
W. MONÁ SCOTT, JUDGE

DIANE MERRIWEATHER  
Plaintiff (s)

Date: January 24, 2022

-VS-

2021 CVG 011765

SAMUEL WILCOX  
Defendant (s)

MAGISTRATE'S ORDER

This matter was assigned to Magistrate John P. Mills, to whom it was referred by Judge W. Moná Scott pursuant to Ohio Civ. R. 53 to take evidence on all issues of law and fact regarding Plaintiff's claim for forcible entry and detainer. The matter was called for a first cause eviction hearing on 1/19/22 at 9am. Plaintiff appeared pro se and Defendant was represented by Mr. Luke Condon.

At the hearing, Defendant made a verbal motion to dismiss based on procedural defects of the Complaint. Specifically, Defendant states that the stated cause of action of the Complaint (violations of R.C. 5321.05) do not match the alleged basis for termination of the tenancy found on Plaintiff's R.C. 1923.04 notice (nonpayment of rent). Plaintiff did not dispute the discrepancy. The Court agrees with Defendant and finds that Plaintiff has failed to state a grounds for which restitution can be granted.

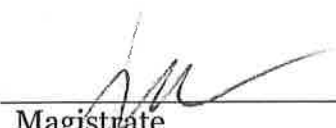
R.C. 1923.05 governs the content of an eviction complaint and states,

The complaint shall particularly describe the premises so entered upon and detained, and set forth either an unlawful and forcible entry and detainer or an unlawful and forcible detention after a peaceable or lawful entry of the described premises.

Among other things, this statute has been interpreted to as limit the grounds for the eviction to those alleged in the complaint. *See M.L.R. Props. Inc. v. Baer*, Sixth Dist. Lucas No. L-85-330, 1986 WL 6703 at \*3 (June 13, 1986). Here, Plaintiff's Complaint alleges that Defendant has violated R.C. 5321.05 but her three-day notice is based solely on nonpayment of rent. Under this case law, Plaintiff is precluded from advancing her eviction complaint based on nonpayment.

Defendant's motion to dismiss the first cause of action is granted. Plaintiff's second cause of action for money damages remains pending for 3/2/22 at 1:30pm via

virtual hearing. Defendant's verbal motion to strike Plaintiff's exhibit (filed 1/12/22) is denied as moot.

  
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Magistrate  
Housing Division

Service: Copies sent by regular U.S. mail to parties/counsel on 1/25/22 by hr.

☐ Clerk to issue notice of Final Appealable Order