

IN THE FAIRFIELD MUNICIPAL COURT
LANCASTER, OHIO

MARK AND BETH POWERS,

Plaintiffs,

vs.

JIM ARNOLD, et al,

Defendants.

Case No. 03-CVG-01890

JUDGMENT ENTRY

This cause came on for hearing on August 26, 2003, upon Plaintiffs' forcible entry and detainer complaint. The Plaintiffs were present and represented themselves. Defendants Robin Mallory and Jamie Mallory were represented by Attorney Kris-Ann Stanley-Gomez.

Defendants moved to dismiss the complaint on the grounds that the complaint was prematurely filed and the Court therefore lacked jurisdiction to entertain it. That is, under O.R.C. Section 1923.04(A) and the decision in Wintrow v. Smith, 32 Ohio Misc.2d 12 (1987), a forcible entry and detainer complaint cannot be properly filed until the expiration of the three day notice required by O.R.C. Section 1923.04(A). For computation of time for service, pursuant to Civil Rule 6, and since the period of time prescribed is less than seven days, the intermediate Saturday and Sunday are excluded in the computation.

Therefore, the Court FINDS that the Plaintiffs served the notice to leave the premises on the Defendants on August 8, 2003, and that Plaintiffs filed their complaint herein on August 13, 2003. The Court further FINDS that the Plaintiffs filed the complaint prematurely based upon the authorities cited above in that the three day notice had not expired as of the time that the complaint was filed, as Saturday, August 9, 2003 and Sunday, August 10, 2003, are excluded from the computation of the three day notice requirement of O.R.C. Section 1923.04(A).

The Court further FINDS that, since proper service of a notice to leave the premises is a jurisdictional prerequisite to the commencement of a forcible entry and detainer action, the Court lacks subject matter jurisdiction to hear the complaint.

IT IS THEREFORE ORDERED that Plaintiffs' complaint be and hereby is dismissed at Plaintiffs' costs.

IT IS SO ORDERED.


JUDGE

c: Plaintiffs
Kris-Ann Stanley-Gomez for Robin and Jamie Mallory
Defendants Jim Arnold and David Yeager