

**IN THE FRANKLIN COUNTY MUNICIPAL COURT
CIVIL DIVISION
COLUMBUS, OHIO**

RLJ MANAGEMENT CO. INC.,

Plaintiff,

v.

DAVID LEWIS,

Defendant.

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Case No. 2020 CVG 33669

Judge Jessica G. D'Varga

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FRANKLIN COUNTY
MUNICIPAL COURT
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ORDER

This matter is before the Court on Defendant's motion to vacate and objections to Magistrate's Decision, Plaintiff's memorandum contra, and Defendant's reply.

Plaintiff filed the complaint in this case on December 23, 2020, seeking restitution of premises and money damages for unpaid rent. The complaint was filed after service of a notice to vacate on December 7, 2020. Pl.'s Compl., Ex. D. The record shows that, while the complaint was pending, Plaintiff served two additional notices to vacate on Defendant: one on January 6, 2021, and one on January 13, 2021. A trial on Plaintiff's claim for restitution of premises was held before the Magistrate on February 9, 2021. The Magistrate found for the Plaintiff, and judgment was entered on February 10, 2021. The instant motion and objection followed. Because it is dispositive, the Court will address the motion to vacate first.

Defendant argues in his motion to vacate that the Court lacks jurisdiction over Plaintiff's claim for restitution of premises because the two notices to vacate served while the complaint was pending essentially rendered invalid the notice to vacate served on December 7, 2020, and a plaintiff must serve a notice to vacate prior to commencing an action for eviction in order for the Court to have jurisdiction over the action. Plaintiff raises several arguments in opposition. For the following reasons, Defendant's motion to vacate will be granted.

"Before filing a complaint in an attempt to evict a tenant, the landlord must provide a notice to vacate pursuant to R.C. § 1923.04. Whether or not that notice has been subsequently waived by the plaintiff is generally a question of fact." *Presidential Park Apts. v. Colston*, 10th Dist. Franklin No. 79AP-604, 17 O.O.3d 220, at *3 (Mar. 20, 1980). In *Colston*, the Tenth District Court of

Appeals held that “by accepting future rent payments, the landlord has waived the three-day notice since such acceptance is inconsistent with the landlord’s notice to vacate.” *Id.* at *4. When a court determines that a landlord has waived the notice to vacate through an inconsistent action, the trial court is divested of jurisdiction over any action for eviction filed based on that notice. *Ryals v. Lynch*, 10th Dist. Franklin No. 96APG02-157, 1996 Ohio App. LEXIS 3219, at *8 (July 23, 1996)

Here, the record shows the following timeline: 1) service of a notice to vacate on December 7, 2020, asking Defendant to vacate by December 18, 2020; 2) a complaint for eviction filed on December 23, 2020; 3) service of a notice to vacate on January 6, 2021, asking Defendant to vacate the premises by January 17, 2021; and 4) service of a notice to vacate by January 19, 2021, asking Defendant to vacate by January 29, 2021. Each of the notices served in January directed Defendant “to move from the premises on or before” the date listed. Therefore, the January 6 notice implied Defendant could reside at the premises until January 17, and the January 19 notice implied Defendant could reside at the premises until January 29. Both of the January notices also stated Defendant had a right to discuss the proposed termination with Plaintiff, that the landlord would consider any objection by Defendant, and that Plaintiff “may” seek judicial enforcement if the Defendant fails to vacate by the date listed.

Indisputably, the plain language of the notice to vacate served on December 7 is inconsistent with the plain language of the two January notices. A tenant receiving notices to vacate after having been sued for eviction could very reasonably be expected to be confused as to the meaning of the notice served prior to the complaint for eviction. Moreover, the purpose of requiring service of a notice to vacate is to afford tenants a clear and unequivocal understanding of what the landlord is asking of them – most critically when they are being asked to move out – and tenants are entitled to rely on the plain meaning of the legal notices their landlords serve upon them. *See e.g., Wodzis v. Bayes*, 10th Dist. Franklin No. 96APE07-891, 1997 Ohio App. LEXIS 1229, at *12 (Mar. 25, 1997) (“While a landlord is only required by R.C. 1923.04 to give a tenant three days to vacate the premises before filing an action in forcible entry and detainer on the fourth day, a landlord cannot give a tenant a greater period of time in the notice to leave the premises than is provided for in R.C. 1923.04 and still file within the statutory time period.”). Accordingly the Court finds based on the record Plaintiff waived the notice to vacate served on December 7, 2020, by taking the inconsistent actions of serving two notices to vacate after filing the complaint.

Plaintiff raises several arguments in opposition to Defendant's jurisdictional argument. First, Plaintiff asserts that "[i]f a separate action is to be brought on a new issue of violation, a new notice for the separate violation and subsequent filing must be posted for the landlord to have the right to file for the new violations under R.C. 1923.04." Upon review, the Court disagrees. The plain text of R.C. 1923.04 does not require a landlord to list a reason why eviction may be sought in the event the tenant fails to vacate; rather, it simply requires the landlord to clearly communicate that the tenant is being asked to leave the premises. The Tenth District Court of Appeals has affirmed this reading, holding "the notice to vacate under Ohio Rev. Code Ann. § 1923.04 does not require that the specific reasons for termination be given." *Venetta v. Battle*, 10th Dist. Franklin No. 88AP-1044, 1990 Ohio App. LEXIS 4558, at *1 (Oct. 18, 1990).

Second, Plaintiff cites R.C. 1923.03 ("Judgments under this chapter are not a bar to a later action brought by either party"), and the Twelfth District case *Showe Mgt. Corp. v. Hazelbaker*, 12th Dist. Fayette No. CA2006-01-004, 2006-Ohio-6356. However, the analysis above is not based on res judicata. Moreover, this case is distinguishable from *Hazelbaker*, in which the trial court dismissed a second case for eviction because a prior case between the same parties and regarding the same property had been adjudicated. In *Hazelbaker*, the trial court explicitly held the second case was barred by res judicata, based on the first case, which is clearly at odds with R.C. 1923.03. In the instant matter, the Court is not dismissing the complaint based on a prior adjudication.

Last, Plaintiff cites R.C. 1923.08, arguing that section "allows for joinder of concurrent ongoing actions." It appears Plaintiff intends to reference R.C. 1923.081 (joinder of claims) rather than R.C. 1923.08 (continuance and bond). In any event, to the extent Plaintiff appears to argue that R.C. 1923.081 demonstrates that the eviction statute contemplates allowing landlords to file multiple "concurrent" or overlapping claims for eviction against the same defendant for the same property at the same time, the Court does not agree that R.C. 1923.081 gives such an indication. That code section simply states that a trial for eviction may be combined with a trial on any claim by the landlord "for past due rent and other damages under a rental agreement" and any counterclaim by the defendant. Thus, R.C. 1923.081 addresses joinder of different claims within the same action, not joinder of entirely separate actions seeking the same relief against the same defendant.

Plaintiff's overarching argument is that the Court's ruling, as a matter of policy, will severely hinder landlords' ability to timely recover possession of property because of the delay inherent in litigating any appeal by tenants. In general, however, the reality in the Franklin County Municipal Court is that appeals of eviction judgments by tenants are few and far between, perhaps one or two dozen out of tens of thousands of cases filed annually. The vast majority of eviction cases are scheduled, decided, and enforced in a manner highly consistent with the summary nature of R.C. 1923 *et seq*, a statute which is specifically "designed" in numerous ways by the General Assembly to afford "speedy determination of the right of possession of the rightful owner" of the subject property. *Properties v. Hawk*, 10th Dist. Franklin No. 76AP-490, 1976 Ohio App. LEXIS 8193, at *3-4 (Dec. 21, 1976). Last, the Court notes that the Tenth District in *Colston* acknowledged the "difficult position" landlords may be put in by being prohibited from accepting future rent after serving a notice to vacate, but ultimately the court upheld as paramount tenants' right under R.C. 1923.04 to receive clear, unambiguous communication about when they are being asked to leave their homes. *Colston*, 10th Dist. Franklin No. 79AP-604, at *4.

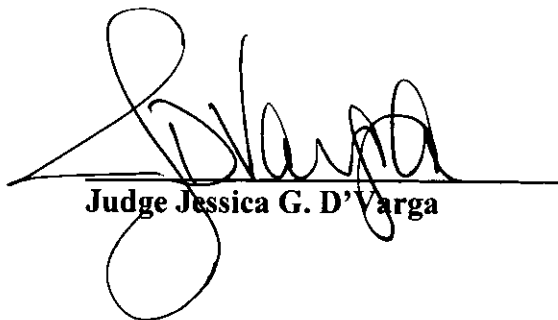
CONCLUSION

For the reasons stated above, Defendant's motion to vacate is **GRANTED**. Plaintiff's first cause of action for restitution of premises is **DISMISSED**, at Plaintiff's cost.

The Clerk is instructed to disburse all bond currently held on deposit in this matter to Defendant forthwith.

SO ORDERED.

6/2/21
Date


Judge Jessica G. D'Varga