

IN THE MUNICIPAL COURT, CHILLICOTHE, OHIO

**FILED**  
JAN 4 2005

ROSEANNA J. STRONG, CLERK  
CHILLICOTHE MUNICIPAL COURT  
CHILLICOTHE, OHIO

Stites Enterprises, Inc.,  
Plaintiff,

CASE NO: 04 CVG 1659

vs.


James Dixon and  
William Mayo, et.al.  
Defendants.

JUDGMENT ENTRY

\* \* . ☒ ☒ ☒ . ☒

The Magistrate's Decision of December 16, 2004, is hereby adopted. The Defendant's Motion to Dismiss is hereby granted. Costs to be paid by Plaintiff.

DATE: 1/4/05

  
JUDGE

PROOF OF SERVICE

The Judgment Entry was served on all parties or their attorneys on the 5th day of January, 2005.

  
Deputy Clerk

IN THE CHILLICOTHE MUNICIPAL COURT  
CHILLICOTHE, OHIO

FILED

STITES ENTERPRISES, INC.  
Plaintiff,

04 DEC 16 AM 11:51

CASE NO. 04 CVG 1659

vs.

ROSEMARY J. ...  
MUNICIPAL COURT  
CHILLICOTHE, OHIO

JAMES DIXON and  
WILLIAM MAYO, et. al.,  
Defendants.

MAGISTRATE'S DECISION  
ON MOTION TO DISMISS

\* \* \* \* \*

This matter came on for consideration of the Defendant's Motion to Dismiss under C.R. 12(B)(1) and (6). The parties have agreed that the matter be decided on the briefs and memorandum submitted by each side. After review of the Motion, Memoranda, relevant case law and statutes, it is found as follows:

FINDINGS OF FACT

1. It is undisputed that Plaintiff is a mobile home park subject to the provisions of Revised Code Chapter 3733. Defendants are tenants pursuant to a written lease which has been attached as an exhibit to the file.
2. Plaintiff has a set of written rules and regulations for the park which are referenced in paragraph 11 of the lease agreement. The actual rules and regulations are contained in a separate document and are not specifically set out in the lease agreement.
3. The lease was signed by Defendants on April 1, 2004. On August 20, 2004, the Plaintiff gave a written notice to Defendants about certain violations of the park rules and regulations, specifically concerning their dogs, traffic and loud music, and unauthorized occupants. These are all areas that are addressed in the park rules and regulations, but not specifically stated in the lease itself.
4. On September 13, 2004, Plaintiff served a 3-day notice upon the Defendants, citing the same problems raised in the August 20, 2004 letter, all being alleged violations of the park rules and regulations. The eviction complaint was filed on September 29, 2004, when Defendants failed to remove their mobile home from the lot.
5. Defendant claims that a 30-day notice is required under O.R.C. 3733.13, to terminate a tenancy for material violations of park rules and regulations under O.R.C. 1923.02(A)(11). Plaintiff contends that the eviction is for breach of the lease under O.R.C. 1923.02(10), and that only a 3-day notice is required. Plaintiff's Complaint alleges that the breach of the lease claimed is Defendants' failure to comply with the park rules and regulations.


CONCLUSIONS OF LAW

1. The lease violations complained of by Plaintiff are all actually violations of the park rules and regulations which are incorporated by reference into the lease in paragraph 11. No other lease violations are claimed and rent is not at issue.
2. The Plaintiff may not sidestep the jurisdictional requirements of O.R.C. 1923.02(A)( 11) and the notice provisions of O.R.C. 3733.13, by claiming a lease violation and proceeding under O.R.C. 1923.02(A)( 10), by merely incorporating the rules and regulations by reference into the lease. This would circumvent the legislative intent in the drafting of Chapter 3733. As stated by the Ohio Supreme Court in *Schwartz v. McAtee*, (1986), 22 Ohio St. 3d 14, " the General Assembly. . . . .created formidable restrictions on the ability of manufactured home park operators to evict tenants. These restrictions were made necessary by the fundamental differences between apartment or conventional house tenants and manufactured home tenants."
3. By enacting O.R.C. §1923.02(A)( 11) and O.R.C. 93733.13, the legislature intended that a mobile home park tenancy not be terminated easily or quickly for violations of park rules and regulations. Therefore the need for a specific notice of the violation and at least 30 days to correct the problems. The court can not allow the Plaintiff to avoid this statutory requirement by merely incorporating the rules and regulations into the lease itself and then serving a 3-day notice for a breach of lease.
4. As Plaintiff has alleged no other lease violations besides the incorporated rules and regulations, the 3-day notice is found to be improper. The court does not have proper jurisdiction to hear this matter and the case must be dismissed.

DECISION

The Defendants' Motion to Dismiss is found to be well taken and should be granted. The case is dismissed without prejudice. Costs to be paid by Plaintiff.

12-16-04  
Date

  
Magistrate

PROOF OF SERVICE

This Magistrate's Decision was served upon all parties or their respective Attorneys on  
*12-16-04.*

DATE: Dec. 16, 2004

*Gretchen S. Steeb*  
Deputy Clerk

NOTICE

Objections to the Magistrate's Decision must be filed in writing within 14 days.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR  
CONCLUSION OF LAW IN THIS DECISION            THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT  
FINDING OR CONCLUSION AS REQUIRED BY CIVIL RULE 53.