

THE ATHENS COUNTY MUNICIPAL COURT
ATHENS, OHIO
CIVIL DIVISION

ADAM VOGT
4 W. Hills Dr.
Athens, OH 45701
Plaintiff

CASE NO: 04CVG00829

FILED
ATHENS COUNTY MUN. COURT

NOV 17 2004

CLERKS OFFICE
ATHENS COUNTY, OHIO

JUDGMENT ENTRY

VS:

TAMMY RILEY
1100 Walnut St.
Nelsonville, OH 45764
Defendant

This matter came on for consideration upon Defendant's Motion For Judgment on The Pleadings November 8, 2004.

Upon hearing the evidence the Judge granted said Motion.

It is, therefore, ORDERED that Defendant's Motion for Judgment on The Pleadings is granted and the case is dismissed without prejudice.

The Clerk is instructed, pursuant to Rule 58(B) of the Ohio Rules of Civil Procedure, to send each party a copy of the Decision and Judgment Entry within three (3) days of filing.


WILLIAM A GRIM, JUDGE

DIRECTION TO CLERK
PER CIVIL RULE 58 (B)

ATHENS COUNTY MUNICIPAL COURT
ATHENS, OHIO

ADAM VOGT,
PLAINTIFF,

v.

TAMMY RILEY,
DEFENDANT.

FILED
Athens County Mun. Court

NOV 08 2004

CLERKS OFFICE
Athens County, Ohio

CASE NO. 2004CVG00829

DEFENDANTS MOTION FOR
JUDGMENT ON THE PLEADINGS

Now comes the Defendant, Tammy Riley, by and through her attorney, and moves this Court for an Order granting her judgment against the Plaintiff on the pleadings.

Said motion is made on the following grounds:

1. Ohio Rev. Code Section 1923.64(A) provides that prior to initiating an eviction action, a landlord must notify a tenant in writing to leave the premises 3 or more days before beginning the eviction action.

2. Ohio Civil Rule 6(A) provides that in computing any period of time prescribed by the rules, the date of the act or event, from which the designated period of time begins to run shall not be included.

3. Ohio Civil Rule 6(A) further provides that in computing any period of time prescribed by any applicable statute, when the time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

4. In the instant action, Plaintiff's Complaint states that he served the Defendant with a 3 day notice to vacate on October 22, 2004.

5. Pursuant to Ohio Civil Rule 6(A), October 22, the day of service, is not included in the 3 day period required by Ohio Rev. Code Section 1923.04(A).

6. As the time period required by Ohio Rev. Code Section 1923.04(A) is less than 7 days, Saturday, October 23, and Sunday, October 24, are not included in the computation of the 3 day period.

7. Therefore, the first day to be computed is Monday, October 25; the second day is Tuesday, October 26; and the third day to be computed is Wednesday, October 27.

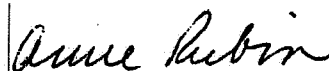
8. Therefore, Thursday, October 28, 2004, is the first day that the Plaintiff could have properly initiated an eviction action against the Defendant.

9. The Complaint in this case is time-stamped as filed on October 26, 2004 and the action was thus prematurely initiated.

As the Plaintiff prematurely initiated the instant action in violation of Ohio Rev. Code Section 1923.04, Defendant requests that judgment be granted on the pleadings in her favor against Plaintiff.

A memorandum of law in support of the Defendant's motion is attached.

Respectfully submitted:



Anne S. Rubin (0018364)
Southeastern Ohio Legal Services
1005 East State St., Suite 10
Athens, Ohio 45701
(740) 594-3558

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

A number of courts have held that Ohio Civil Rule 6(A) is applicable to the computation of the three day period set forth in Ohio Rev. Code Section 1923.04(A). Their decisions include: Midtown Apts. v. Davis (Franklin Co. App. Ct. 1985), 20 Ohio B. 128; McCallister v. Pickrel (Licking Co. Muni. Ct. 2002), No. 02-CVG-00268, attached; Will v. Siller (Painesville Muni. Ct. 1990), No. 90-CVG-1248, attached; Bowers v. Starcher (Springfield Muni. Ct. 1987), No. 87-CL-254686, attached; Northpointe Apts. v. Dooley (Franklin Co. Muni. Ct. 1985), No. M85-CVG-3909, attached.

Proper service of a valid 3 day notice is a condition precedent to the trial court's subject matter jurisdiction in a forcible entry and detention action. Associated Estates Corp. v. Bartell (Cuyahoga Co. 1985), 24 Ohio App. 3d 6; Gallia Metro. Housing Auth. v. Fry (Gallia Co. App. Ct. 1994), Case No. 93CA22, attached.

For the above-stated reasons, the Plaintiff's Complaint should be dismissed.

Respectfully submitted:



Anne S. Rubin (0018364)
Southeastern Ohio Legal Services
1005 East State St., Suite 10
Cincinnati, Ohio 45201
(513) 594-3558

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Judgment on the Pleadings was served by U.S. mail and personal delivery on the Plaintiff this 8th day of November, 2004.



Anne S. Rubin (0018364)