

## IN THE IOWA DISTRICT COURT IN AND FOR HENRY COUNTY

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**JOCEBEE LLC,**

Plaintiff,

vs.

**AMBER RENEE WILSON,**Defendant.

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CASE NO. SCSC022942

Amber Wilson (“Wilson”) appeals from the decision of Magistrate Patrick Brau entering judgment ordering her removed from the real estate at 1803 Green Valley Dr. Lot 44, Mt. Pleasant, IA 52641.

**I. COURSE OF PROCEEDINGS**

Plaintiff Jocebee LLC (“Jocebee”) filed this action for Forcible Entry and Detainer on January 23, 2023 on the basis of non-payment of rent and utilities. The matter was heard before Magistrate Patrick Brau on February 3, 2023. Magistrate Brau issued a ruling on March 22, 2023 which determined Jocebee’s Notice to Cure or Quit was proper and satisfied the requirements for the forcible entry and detainer (“FED”) action, and granted possession of the property to Jocebee. Wilson posted an appeal bond on March 22, 2023 and a Notice of Stay of Execution and Judgment was issued that same day. The matter was submitted to the Court after briefing by the parties on April 20, 2023.

**II. STATEMENT OF ISSUES**

Jocebee claims that Wilson was delinquent on rent for the month of January, 2023 and a Notice to Cure or Quit was served by posting, regular and certified mail. Following Wilson’s failure to cure the full amount due, Jocebee filed this FED action and sought possession of the property.

Wilson contends that Jocebee failed to provide a proper three-day cure period for the FED action. She also argues that she tried to make a payment before the expiration of the cure period, and Jocebee refused to accept the payment, thereby waiving their right to terminate the lease.

### **III. FINDINGS OF FACT**

1. Jocebee is the owner of 1803 Green Valley Dr. Lot 44, Mt. Pleasant, IA 52641.
2. Wilson and Jocebee entered into a Mobile Home Lease Agreement on March 1, 2021 and Wilson has been a tenant of Jocebee ever since.
3. The lease agreement is for a month-to-month lease, but provides that if rent is unpaid when due, Jocebee may terminate the lease by providing a three-day notice of non-payment/notice to cure pursuant to the Iowa Uniform Residential Landlord and Tenant Act.
4. Wilson's rent has always been set at \$625 per month.
5. Wilson failed to timely pay rent for the month of January, 2023.
6. On January 6, 2023, Jocebee served a Notice to Cure or Quit ("Notice") on Wilson. The Notice was sent by certified and regular mail on January 6, 2023, and posted on Wilson's door. The Notice demanded payment of the full \$625 January rent in three days, and informed Wilson that if she failed to make the payment, legal proceedings would be instituted.
7. Wilson contacted Jocebee's property manager, Angela, on January 14, 2023 through text regarding her normal payment portal being locked. Angela informed Wilson that they were past the three-day notice timeline and "nothing but the full balance will be accepted."
8. Jocebee filed a FED action on January 13, 2023. Based upon the service date of January 6, 2023, Jocebee's first FED action was premature and filed on the last day of the cure period. Jocebee dismissed that FED action on January 20, 2023.

9. Jocebee filed the present FED action on January 23, 2023. The matter proceeded to hearing on February 3, 2023. Following testimony and evidence, Magistrate Patrick Brau issued a ruling on March 22, 2023 which found for Jocebee and ordered Wilson to vacate the property.

10. Wilson timely posted an appeal bond and the matter was set for hearing on briefs only on April 20, 2023.

#### IV. STANDARD OF REVIEW

Iowa Rule of Civil Procedure 1.907(2) governs appeals from small claims court to district court. A small claims appeal to the district court is a de novo review pursuant to Iowa Code Section 631.13(4). This means the reviewing court decides the case anew. The district court “shall decide the appeal without regard to the technicalities or defects which have not prejudiced the substantial rights of the parties, and may affirm, reverse, or modify the judgment, or render judgment as the judge or magistrate should have rendered.” Iowa Code § 631.13(4)(a).

If the record is inadequate for the reviewing court to render a judgment on appeal, additional evidence may be ordered. See Id. Neither party requested the opportunity to present additional evidence here. The record before the reviewing court includes the Original Notice and Petition; Appearance of Counsel for Defendant; Magistrate’s Notes from Hearing; Plaintiff’s Exhibit 1; Defendant’s Exhibits A, B, C and D; Order of March 22, 2023; Notice of Stay of Execution of Judgment; the digital audio recording of the trial proceedings; Defendant’s Brief and Reply Brief; and Plaintiff’s Brief. This Court has reviewed the entire record created at the hearing on February 2, 2023 and the subsequent pleadings. The Court concludes that the record is more than adequate to render a judgment without additional evidence.

## V. CONCLUSIONS OF LAW & ANALYSIS

### 1. **Whether or Not the Wilson Was Allowed a Proper Three-Day Cure Period**

When a tenant has failed to timely pay rent, the landlord must notify the tenant in writing of nonpayment of rent and inform the tenant of the right to cure the nonpayment prior to terminating the rental agreement. Once the landlord has given a tenant three days' notice to pay rent and has terminated the tenancy as provided by the Iowa Code, the landlord can commence an action for forcible entry and detainer without giving a three-day notice to quit. Symonds v. Green, 493 N.W.2d 801, 802–03 (Iowa 1992). See also Iowa Code Sections 562B.25(2) and 648.3(1). Service of a notice to cure or quit may be done by posting the notice on the primary entrance door of the dwelling unit and mailing by both regular mail and certified mail to the address of the dwelling unit or to the tenant's last known address. Iowa Code Section 562B.27A(1)(c). Notice that has been served by posting and mailing is deemed completed four days after the notice is deposited in the mail and postmarked for delivery, whether or not the recipient signs a receipt for the notice. Iowa Code Section 562B.27A(2).

In this case, it is undisputed that Wilson was delinquent in her January rent. It is also undisputed that a proper Notice was served on her by posting and mail on January 6, 2023. Wilson contends, however, that she was not allowed the full cure period and therefore the Court lacked the authority to proceed with the FED. The Court disagrees. The Notice was mailed January 6, 2023. The three-day period to cure began four days later, giving Wilson until January 13, 2023. Once that period ran, Jocebee was free to file a FED action to enforce its rights to the property.

Wilson argues that because Jocebee filed a FED action prematurely, on January 13, 2023, she was not given the full opportunity to cure the deficiency. If this Court was reviewing a judgment from that FED action, that may very well be the case. However, that FED action was

dismissed. This is an entirely new FED action, filed on January 23, 2023. This FED was filed an appropriate amount of time after the cure period and is thus valid.

Wilson believes that a new Notice to Cure and Quit should have been served, and she should have been allowed a new cure period. There is absolutely no legal authority contained in the Iowa Code or case law to support this premise. Once a party has been given notice and failed to pay the past due rent, their tenancy is terminated. No further notice is required. Both the Iowa Code and case law are quite clear on that point. Wilson was given a three-day cure period to pay rent. She could have still paid the \$625 on January 13, regardless of whether a FED was filed. The fact that a FED was filed prematurely is irrelevant. The FED action is a vehicle to enforce one's right to property; a premature FED does not invalidate a properly served Notice, rather the fact that the Fed was filed early invalidates the FED action itself. The only way a FED action could be barred and a new Notice required would be if a landlord failed to timely file a FED within thirty days and instead allowed peaceable possession during that time period pursuant to Iowa Code 648.18. That is simply not the case here.

For all the reasons cited by the Court, the Court does find that Wilson was allowed a proper three-day cure period, and no new Notice was necessary.

## **2. Whether or Not Jocebee Refused to Accept Timely Payment of the Rent**

Wilson's brief argues that she attempted to pay her past-due rent during the cure period, but Jocebee refused to accept the rent. Because Jocebee refused to accept the rent offered during the cure period, Wilson states they have waived their right to bring this FED. Jocebee refutes Wilson's assertion. Jocebee argues that Wilson was trying to be a partial amount, and they were not bound to accept anything but the full amount due. Had Jocebee accepted a lesser amount, it

would have waived its right to terminate the rental agreement. Iowa Code Section 562B.28. Therefore it is understandable that Jocebee was requesting the entire \$625 that was past-due.

The Court has reviewed the entire recording of the hearing, and the record supports Jocebee's position. Wilson's testimony is contradictory and vague. She testified that she tried to make a payment, but does not state how much she actually tried to pay. At one point, when cross examined, she agreed that she tried to make a partial payment. When she tried to make a payment is also unclear, as she stated that she tried paying on the 12<sup>th</sup> and the 13<sup>th</sup>, but was locked out of her portal. Later, however, when questioned by Magistrate Brau, Wilson stated that she tried paying before court.

Regardless of when she tried to pay, Wilson argues that Jocebee was demanding a much greater amount that was due, \$1,830. She bases this on a screenshot of her portal which shows "Tenant Balance Due" of \$1,830 and an attached text message that states "nothing but the full balance will be accepted..." Defendant's Exhibit B. This Exhibit is misleading, however. The screenshot has a date of February 2, 2023. The text messages have a date of January 14. This indicates that Angela, the property manager, did not send both the text and screenshot to Wilson and the two shouldn't be viewed as one message. Instead, Angela simply sent the text asking for the "full balance" due. In this light, it is clear that the "full balance" referred to in the text was the amount indicated on the Notice, \$625. Nowhere is there any evidence that Jocebee told Wilson that she had to pay more than the \$625 listed on the Notice. In contrast, the record does support that the only attempted payment by Wilson was for \$325, which she testified that she offered to pay before court. This was the only certain number that Wilson testified to, and this would clearly be a partial payment that Jocebee was not bound to accept.

The Court cannot find any evidence in the record that Jocebee refused to accept a payment of \$625 prior to the expiration of the cure period.

**VI. ORDER**

For the above stated reasons, the decision and judgment of the trial court is **AFFIRMED** and the Defendant's Appeal shall be and is hereby **DENIED**. Costs are assessed to the Defendant.

THE STAY OF EXECUTION OF THE MARCH 22, 2023 ORDER IS LIFTED.

IT IS SO ORDERED.



State of Iowa Courts

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OTHER ORDER

So Ordered

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Joshua P. Schier, District Court Judge,  
Eighth Judicial District of Iowa

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