

No. 1-13-1261

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any part except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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HOLSTEN MANAGEMENT CORPORATION,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13 M1 703873
	)	
LAYSA DIAZ,	)	The Honorable
	)	Orville E. Hambright, Jr.,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

**ORDER**

- ¶ 1 **Held:** In this eviction case, the five days notice to cure the rent delinquency was invalid, because the notice improperly specified that the rent must be paid by the following Sunday. Although the fifth day from the service of the notice fell on a Sunday, the Statute on Statutes automatically continued the Sunday deadline to the following Monday.
- ¶ 2 On Tuesday, October 16, 2012, plaintiff Holsten Management Company issued a notice of termination of tenancy, commonly called a “five days notice,” to defendant Laysa Diaz, demanding that she pay delinquent rent for premises owned by Holsten which she occupied in

Chicago. The notice stated that unless Diaz paid accrued past due rental payments totaling \$1,064.60 within five days from the date of service, Diaz's tenancy would be terminated Sunday, October 21, 2012.

¶ 3 Diaz made no rent payment to Holsten in response to the notice. On February 14, 2013, Holsten filed this forcible entry and detainer action to recover possession of the premises pursuant to section 9-209 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/9-209 (West 2010)). Diaz moved to dismiss the case pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2010)), asserting that because the last day of the notice of termination fell on a Sunday, she was entitled to pay the overdue rent by the following Monday, thus rendering the notice invalid. The trial court granted the motion and dismissed the case. This appeal followed.

¶ 4 Diaz has not filed a brief on appeal. However, the issues and record are straightforward, and we will address the merits of the appeal in accordance with the standards of *First Capitol Mortgage Corp v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 5 Whether the trial court erred in granting the motion to dismiss is a question of law, and therefore our review is *de novo*. *Block v. Pepper Construction Co.*, 304 Ill. App. 3d 809, 812 (1999). Section 2-909 of the Code provides that a landlord may demand past due rents and terminate the lease "unless payment is made within a time mentioned in such notice, not less than 5 days after service thereof \*\*\*." 735 ILCS 5/9-209 (West 2010). The statute further provides that the landlord may sue only if the tenant does not pay the amount due within the "time mentioned in such notice." *Id.*

¶ 6 While both of these provisions use the phrase "time mentioned in such notice," the terms are not necessarily parallel under the facts presented. The Statute on Statutes provides the proper method to compute time to determine when any act provided by law is to be done. It specifically

excludes the last day when it falls on a Sunday. See 5 ILCS 70/1.11 (West 2010). In particular, when the time period expires on a Sunday, the required act may be properly performed the following day, because Sundays are excluded for purposes of determining timeliness. *Id.*; *Havens v. Miller*, 102 Ill. App. 3d 558, 564 (1981). Nothing in the Statute on Statutes prohibited Diaz from paying the rent on a Sunday. However, it did excuse her from the Sunday compliance deadline and extended her rights to the following Monday. Diaz had until Monday, October 22, 2012 to pay the delinquency even though the “time specified in such notice” was Sunday, October 21. Because the notice expressly stated that the time to pay expired on a date earlier than October 22, the earliest possible date provided by law, the notice was incorrect.

¶ 7 The sole argument Holsten presents in its brief is that the one-day difference is irrelevant because Diaz did not claim that she did, in fact, tender the overdue rent on Monday, October 22. Even taking that as true, it does not change the result. We believe that this defect invalidated the notice. The purposes of the notice requirement include providing tenants with grace periods to make slightly late rent payment and avoid loss of their leasehold, and to provide fair warning to tenants, in cases where there might be a dispute or misunderstanding over the rent amount or its transmission, that the landlord has not received the rent due. Where the notice, as here, sets forth a deadline that is earlier than the actual, legal deadline, the tenant may rely on that information and decline to make a payment after the specified date, in the mistaken belief that the “late” payment would be futile. Forcible entry and detainer actions are special statutory proceedings in derogation of the common law. Accordingly, a landlord must comply with the requirements of the statute, especially those provisions which relate to jurisdiction. The demand must be properly made for jurisdiction to attach. *Figuroa v. Deacon*, 404 Ill. App. 3d 48, 52 (2010). An invalid

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demands results in dismissal of the underlying lawsuit. *Nance v. Bell*, 210 Ill. App. 3d 97, 100 (1991).

¶ 8 The trial court correctly dismissed the case because of the invalid notice.

¶ 9 Affirmed.