

## CHAPTER 4 JUDICIAL EVICTION PROCEDURES

### 401. COMPLAINT

If, after the expiration date set forth in the notice to quit the tenant has not quit possession of the dwelling unit, the landlord may file a complaint in the Court for eviction. The complaint shall state:

- A. The names and known addresses of the tenant(s) against whom the suit is brought;
- B. A description of the rental agreement, if any;
- C. The address or reasonable description of the location of the premises;
- D. The grounds for eviction;
- E. A statement showing that the notice to quit and any required notices have been served in accordance with this Code or other applicable Nation law or ordinance;
- F. A statement of the relief demanded, including any claim for possession of the dwelling unit, damages, fees, costs, or other relief; and
- G. If the landlord is the Housing Entity, a statement that the Housing Entity has complied with all required regulatory processes prior to filing the eviction action.

### 402. ACTION UPON FILING COMPLAINT

When a complaint is filed in the Court pursuant to this Code, the Court shall issue an order requiring the defendant named in the complaint to appear before the Court on a certain date to answer the complaint. The date for appearance for answering the complaint shall be no less than ten (10) calendar days after the date of the order.

### 403. COMMENCEMENT OF PROCEEDINGS

- A. If the tenant appears before the Court in person or in writing to answer the complaint, the Court shall set a trial date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.
- B. The Court shall set a trial date which is no more than fifteen (15) calendar days following the date for appearance.

- C. A defendant may, for good cause shown, obtain an extension of time beyond the fifteen (15) day period. The Court may refuse to extend the trial date where the complaint is based upon nuisance or injuries as provided in Section 301 of Chapter 3, and shall not extend the date of hearing where the complaint is based upon conduct which would constitute a serious danger to public health, safety, or peace.
- D. The Court may, in its discretion, and on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

404. DEFENSES

The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:

- 1. The landlord has not proven a breach of the lease.
- 2. The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.
- 3. The landlord has, without good cause, failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, and the repairs are necessary for the reasonable enjoyment of the premises.
- 4. There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after reasonable notice and demand. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for rent. A tenant may be evicted after such period if he fails or refuses to pay the reasonable rental value of the premises.
- 5. Due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied, including the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
- 6. That there are such serious and material breaches of the rental agreement or this Code that it would be unjust to grant landlord a remedy.

7. The landlord is evicting the tenant because of his/her sex, sexual orientation, religion, age, marital status, family status, or disability.
8. Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

#### 405. DISCOVERY AND PREHEARING PROCEEDINGS

Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of trial. Requests for discovery shall be made no later than three (3) calendar days following the setting of the trial date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

#### 406. EVIDENCE

Evidence in proceedings under this Code shall be under the provisions of the Oneida Indian Nation Rules of Evidence.

#### 407. BURDEN OF PROOF

The burden of proof in all proceedings under this Code shall be preponderance of the evidence.

#### 408. JUDGMENT

- A. Within five (5) calendar days of the date of the trial, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:
  1. Order the immediate eviction of a tenant;
  2. Order delivery of the premises to the appropriate party;
  3. Grant damages as provided in any agreement of the parties or by this Code, including interest;
  4. Order the parties to carry out an obligation required by Nation law;
  5. Establish a payment plan for the tenant;
  6. Order rent payments out of distribution payments or through garnishment;

7. Establish an authority in another person/agency to fulfill rights or obligations of either landlord or tenant;
8. Remediate the action, in part or in whole, through appropriate recalculation of rent;
9. Order the payment of attorneys' fees and the costs and expenses of litigation;
10. Grant any relief provided in this Code.

- B. If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the landlord following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

#### 409. FORM OF JUDGMENT

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons supporting the judgment. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and fees as appropriate.

#### 410. EXECUTION OF JUDGMENT

Any judgment may be immediately executed, and the judgments and orders of the Court shall enforced by a Nation police officer. The police officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any police officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment.

#### 411. STAY OF EXECUTION

If judgment for possession of the dwelling is entered in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order within five (5) days of the judgment being rendered, if the following is established:

- A. Good and reasonable grounds affecting the well-being of the party are stated;
- B. There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- C. Execution of the judgment could result in extreme hardship for the tenant; or

- D. A bond is posted or monies are paid to the Court to satisfy the judgment or pay for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed one month in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance with any order of the Court.

412. APPEALS

Appeals under this Chapter shall be in accordance with the Oneida Indian Nation Rules of Appellate Procedure and shall be to the Nation Appellate Court.

413. MISCELLANEOUS COMPLAINTS AND CLAIMS

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this code may be made under the Rules of Civil Procedure Code.

414. JUDGMENT TO LEAVE THE PREMISES

Any judgment to leave a premises shall be by written order of the Court and shall be delivered to the tenant in the following manner:

- A. Delivery shall be made by:
  - 1. A police officer of the Nation; or
  - 2. Any person authorized by the Court.
- B. Delivery will be effective when it is:
  - 1. Personally delivered to a tenant; or
  - 2. Personally delivered to an adult living in the premises with a copy delivered by mail to the tenant, or
  - 3. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail to the tenant.
- C. If the notice cannot be given by means of personal delivery, or the tenant cannot be found, the notice may be delivered by means of:
  - 1. Certified mail, return receipt requested, to the last known address of the tenant, or
  - 2. Securing a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, posting a copy of the

notice in some public place near the premises, including a Nation office, or other commonly-frequented Nation facility, and sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

415. FORCIBLE EVICTION

- A. Where the Court orders an eviction, and the tenant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the tenant or other occupants may be forcibly removed from the premises by a Nation law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the tenant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection C below.
- B. Following eviction, the Court may allow the landlord access to the property for purposes of preserving and securing the property.
- C. Following forcible eviction of the tenant and/or other occupants, the personal property of the tenant and/or occupants shall be stored by the landlord or owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former tenant and/or other occupants shall pay the reasonable costs of removal and storage. If they do not pay such costs within thirty (30) days, the landlord or owner is authorized to sell the property in order to recover these costs. The landlord or owner shall provide the former tenant and/or occupants with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former tenant and/or occupants. Nothing in this section shall be construed to prevent the former tenant and/or occupants from reclaiming property remaining after the sale if they can arrange to do so in a reasonable manner satisfactory to the landlord or owner.

416. NO SELF-HELP EVICTION

No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving a notice to quit and obtaining a Court order as provided in this Code.