

Title 6. Property and Land - Chapter 611

LANDLORD-TENANT

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where it bound to the earth - issues

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611.1. Purpose and Policy

611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation’s rental programs.

611.1-2. *Policy.* It is the Nation’s policy to provide a fair process to all landlords and tenants of the Nation’s rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.

611.2. Adoption, Amendment, Repeal

611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C.

611.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

611.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

611.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

611.3. Definitions

611.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹

(b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.

(c) “Nation” means the Oneida Nation.

¹ See BC Resolution 09-27-17-H providing that the Comprehensive Housing Division means the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

- (d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.
- (e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.
- (f) “Reservation” means all property within the exterior boundaries of the reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (g) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted jointly by the Land Commission and the Comprehensive Housing Division in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law, provided that where such requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority.
- (h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.
- (i) “Security Deposit” means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

611.4. Rental Programs

611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive Housing Division shall provide residential rental programs for providing housing to the following types of tenants and the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program:

- (a) Elder tribal members;
- (b) Low-income Oneida tribal members and families; and
- (c) Tribal members in general.

611.4-2. *Rental Eligibility Requirements.* In order to be eligible for a rental agreement, applicants shall meet the following conditions:

- (a) Be eighteen (18) years of age at the time of the application;
- (b) Have no felony or drug convictions within the past two (2) years from the date of application, provided that a pardon or forgiveness received pursuant to the Pardon and Forgiveness law may provide an exception to this condition;
- (c) Meet the local governments’ laws’ requirements regarding residency restrictions for convicted sex offenders;
- (d) Meet the income requirements for entering the rental agreement as determined by the rental program’s governing rules;
- (e) Not hold a residential lease with the Nation; and
- (f) Meet any other eligibility requirements set by the rental program’s rules, which may not be less strict than this law, but may be stricter than this law.

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

611.5. Rental Agreement Documents

611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

- (1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;
- (2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;
- (3) Set the time of commencement and expiration of the rental agreement;
- (4) Provide a reasonably definite description of the premises;
- (5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and
- (6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

- (A) Increase rent;
- (B) Decrease services;
- (C) Bring an action for eviction pursuant to the Eviction and Termination law; and/or
- (D) Refuse to renew a rental agreement.

(2) Except as otherwise provided in this law in regards to domestic abuse, authorizes the eviction or exclusion of a tenant from the premises other than through the process described in the Eviction and Termination law.

(3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal action or dispute arising under the rental agreement except as supported by a court order.

(4) States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not

affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(5) Imposes liability on the tenant for any of the following:

(A) Personal injury arising from causes clearly beyond the tenant's control.

(B) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This subsection does not affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

(6) Waives any obligation on the part of the landlord to deliver the premises in a fit and habitable condition or to maintain the premises during the tenant's tenancy.

(7) Allows for periodic tenancy, which for the purposes of this section means when a tenant uses/occupies a premises without an effective and valid rental agreement by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements are not permitted under any circumstances.

611.6. Rights and Duties of Landlords and Tenants

611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision found in a valid rental agreement.

611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is evicted from the premises and leaves personal property, the landlord may presume that the tenant has abandoned the personal property and may dispose of said property in any manner that the landlord, in his or her sole discretion, determines is appropriate, provided that:

(a) The landlord shall hold personal property for a minimum of five (5) business days and the tenant may retrieve said personal property by contacting the landlord.

(b) The landlord shall keep a written log of the date and the work time that the Nation's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the property after the expiration of the timeframe provided in the order to vacate.

(c) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property.

611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary provision in writing signed by both parties.

(a) *Duties of the Landlord.*

(1) Except for repairs made necessary by the negligence of, or improper use of the premises by the tenant, the landlord has a duty to do all of the following:

(A) Keep in a reasonable state of repair portions of the premises over which the landlord maintains control.

(B) Keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as heat, water, elevator, or air conditioning.

(C) Make all necessary structural repairs.

(D) Except as provided in section 611.6-3(b)(2), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the premises and no longer in reasonable working condition.

(E) Comply with any laws or rules of the Nation that are applicable to the premises.

(2) If the premises are part of a building where other parts are occupied by one (1) or more other tenants, negligence or improper use by one (1) tenant does not relieve the landlord from the landlord's duty to make repairs as provided in 611.6-3(a)(1), provided that the landlord may require the responsible tenant to pay for such repairs.

(3) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any violation of either the Building Code of the Oneida Nation or the Zoning and Shoreland Protection Ordinance if all of the following apply:

(A) The landlord has actual knowledge of the violation;

(B) The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises;

(C) The violation presents a significant threat to the prospective tenant's health or safety; and

(D) The violation has not yet been corrected but the landlord shall correct the violation prior to the tenant taking occupancy of the premises.

(4) If the premises are damaged by fire, water or other casualty, not the result of the negligence or intentional act of the landlord, this subsection is inapplicable and either section 611.6-3(b) or (c) governs.

(5) The landlord is responsible for all required pest control to keep the premises in a safe and healthy condition, provided that where an infestation has occurred due to the acts or inaction of the tenant the pest control costs may be assessed against the tenant.

(b) *Duties of the Tenant.*

(1) If the premises are damaged, including by an infestation of insects or other pests, due to the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the remediation, repair, or redecoration, and in such case the tenant shall reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proven otherwise by the tenant.

(2) The tenant shall keep plumbing, electrical wiring, machinery and equipment furnished with the premises in reasonable working order.

(3) Tenants shall comply with all laws and rules of the Nation.

(c) *Untenability.* If the premises become untenable because of damage by fire, water or other casualty or because of any condition hazardous to health, or if there is a substantial violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the tenant may move from the premises unless the landlord promptly repairs, rebuilds or eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting the health or safety of the tenant.

- (1) The tenant may also move and terminate the rental agreement if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant.
 - (2) If the tenant remains in possession, the landlord shall decrease rent for each month to the extent the tenant is deprived of the full normal use of the premises. The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing how and when rent is decreased pursuant to this section. This subsection does not authorize rent to be withheld in full, if the tenant remains in possession.
 - (3) If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord shall repay any rent paid in advance apportioned to the period after the premises become untenable. This subsection is inapplicable if the damage or condition is caused by negligence or improper use by the tenant.
- (d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the check-in sheet to a tenant upon renewal of a rental agreement.
- (e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written notice prior to entering the tenant's premises where notice is required to either be personally served to the tenant or posted on the premises. A landlord is exempt from this notice requirement in the case of an emergency welfare check. The basis of a welfare check may include, but is not limited to the following:
- (1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy based on reports of child abuse or neglect, medical concerns, suspicious activity or other reported information;
 - (2) The landlord suspects the tenant has abandoned the premises; and/or
 - (3) The landlord receives notice that the premise's utilities have been disconnected.
- (f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as landlord a person other than the tenant's original landlord can prejudice the right of the original landlord to possession of the premises.
- (g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for additional terms, the landlord shall, at a minimum, inspect the premises once annually.

611.7. Domestic Abuse Protections

611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following documentation, regardless of marital status, the landlord shall change the locks to the premises and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the domestic abuser:

- (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;
- (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a co-tenant;

- (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain on the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date the rental agreement is modified. If the latter applies, in addition to removing the co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend its duration.

611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse with a defense to eviction should the abusers actions be the cause for eviction.

611.8. Sex Offender Registry

611.8-1. Should a tenant request information about whether any other tenants are required to register as a sex offender, the landlord shall provide the tenant with written notice that he or she may obtain information about the sex offender registry and persons registered within the registry by contacting the department of corrections. The landlord shall include in such notice the appropriate telephone number and internet site of the department of corrections.

611.9. Termination of Tenancy at Death of Tenant

611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes aware of the tenant's death;
- (b) The expiration of the term of the rental agreement.

611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination of his or her tenancy. A landlord may not contact or communicate with a member of the deceased tenant's family for the purpose of obtaining from the family member rent for which the family member has no liability.

611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises from any obligation under a rental agreement or any other liability to the landlord.

611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer eligible for a rental agreement, the non-Tribal member tenant may remain in the premises for the longer of either the duration of the rental agreement or ninety (90) days from the date of the Tribal member tenant's death. If the latter applies, the landlord shall revise the rental agreement to extend its duration.

611.10. Landlord or Tenant Actions

611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement.

611.10-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

End.

Adopted – BC-10-12-16-C