

COURT OF APPEALS

Tracey Denn and
Richard Denn,
Appellants,

Case No.: 18-AC-008

v.

September 25, 2018

Oneida Comprehensive Housing Division,
Respondent.

INITIAL REVIEW DECISION

This matter has come before Oneida Judiciary Appellate Judges: Susan Daniels, Chad Hendricks, and Leland Wigg-Ninham for appellate review.

BACKGROUND

Appellants Tracey and Richard Denn (hereinafter “Denns”) signed a residential lease with the Comprehensive Housing Division (hereinafter “Housing”) on April 18, 2013, for a property located at W337 Cornelius Circle, Oneida, WI 54155. On August 15, 2018 Richard Denn was named as a defendant in a criminal complaint involving a drug offense in Brown County. Housing was notified of the criminal complaint and immediately sent a warning letter to the Denns that their lease could potentially be terminated. Two days later on August 17, 2018, Housing issued the Denns a five (5) day notice to evict and terminate their lease. The Denns filed for a Temporary Restraining Order (hereinafter “TRO”) with the Oneida Judiciary Trial Court (hereinafter “Trial Court”) to stop the eviction on August 22, 2018. Housing filed a Motion to Lift Temporary Restraining Order on August 23, 2018. The Trial Court granted the TRO and scheduled a hearing for August 29, 2018. The Trial Court issued an order on August 30, 2018, that granted Housing’s motion to lift the TRO and upheld the eviction and termination of the Denns lease with Housing. The Denns filed a perfected Notice of Appeal which included a Petition for Stay of Trial Court’s Judgment with the Oneida Judiciary Court of Appeals on September 11, 2018.

DECISION

After review of the information contained in the Notice of Appeal and the decision of the Trial Court as the original hearing body, it is determined that the Denns have not sufficiently alleged that the Trial Court's decision:

1. Violated applicable provisions of the Constitution;
2. Violated provisions, substantive or procedural, of applicable Tribal law or applicable federal law;
3. Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is not supported by the substantial evidence on the record taken as a whole.

The Denns have failed to state the legal grounds for their appeal under Oneida Rule of Appellate Procedure §805.5-2(c)(3). The Trial Court properly found that Housing could terminate the Denn's lease per 6 O.C. 610.5-1(b) due to the criminal complaint against Richard Denn in Brown County on August 15, 2018.

The Denns argue that the Trial Court abused its discretion by allowing Housing to proceed with the eviction based on a violation of Wisconsin's Criminal Laws. However, over 40 years ago, the U.S. Supreme Court determined that Public Law 280 granted states criminal jurisdiction over tribal members, *Bryan v. Itasca County*, 426 U.S. 373 (1976). Since Public Law 280 applies to Indian country within Wisconsin, the State of Wisconsin has criminal jurisdiction on the Oneida Reservation, 18 U.S. Code §1162. Therefore, Wisconsin's criminal laws are applicable to all Oneida tribal members while located within the boundaries of the Oneida Reservation.

Housing was within their rights to terminate the Denn's lease per 6 O.C. 610.5-1(b). The criminal complaint alleges that Richard Denn violated a Wisconsin criminal drug statute. As explained above, Wisconsin's criminal laws are applicable to all occupants who sign a lease with Housing. The Trial Court found that Housing gave the Denns the proper required notice of termination and eviction per 6 O.C. 610.5-3(c). Therefore, the Trial Court did not abuse its discretion when it upheld the Termination and Eviction of the Denn's residential lease with Housing.

The Trial Court's Order upholding the Eviction and Termination of the Comprehensive Housing Division's Rental Agreement with Denn is AFFIRMED. Since the decision of the Trial Court is affirmed and the Denny have already vacated the premises, the Petition for Stay of the Trial Court's Judgment contained in the Notice of Appeal is moot.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A this appeal is hereby **DENIED**. The Petition for Stay of the Trial Court's Judgment is **DENIED**. Dated this 25th day of September 2018, in the matter of Case Number 18-AC-008, *Tracey Denn and Richard Denn v. Oneida Comprehensive Housing Division*.

It is so ordered.