

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Corinne C. Zhuckkahosee,
Petitioner

v.

Case No: **18-TC-021**

Comprehensive Housing Division
Respondent

FINAL DECISION AND ORDER

This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding. Appearing in person: Petitioner, Corinne C. Zhuckkahosee and Respondent, Comprehensive Housing Division represented by Attorney Krystal John and Rebecca Skenandore.

BACKGROUND

The Court received a petition for a Temporary Restraining Order to stop the vacate process for eviction on Corinne C. Zhuckkahosee's residence located at 2686 West Point Road, Green Bay, WI 54304, by the Comprehensive Housing Division (CHD). On August 15, 2018 the Respondent filed and served on the Petitioner a Motion to lift the Temporary Restraining Order. The Temporary Restraining Order was granted and a hearing was held on August 16, 2018. At the hearing the Motion to lift the Temporary Restraining Order was found to be improperly served on the Petitioner, however, the Petitioner verbally waived defective service.

STATEMENT OF THE CASE

The Petitioner is seeking to stop the eviction process and allow her to stay in the home.

ISSUE

1. Is the Petitioner entitled to avoid an eviction and remain in the home when she violated the rental agreement for failure to pay rent?

FINDINGS OF FACT

1. The Court has jurisdiction pursuant to Chapter 610, Eviction and Termination, of the Oneida Code of Laws.
2. The Court accepted the petition for a temporary restraining order (TRO) and placed a stay on the eviction procedure at Corinne C. Zhuckkahosee's residence located at 2686 West Point Road, Green Bay, WI 54304.
3. The Respondent pursued the termination of Petitioner's rental agreement due to unpaid rent.
4. The Respondent complied with all notice requirements in accordance with the Eviction and Termination Law.
5. On February 9, 2018, Petitioner received a warning letter for late payment of rent.
6. On March 2, 2018, Respondent issued a thirty (30) day Notice to Cure or Vacate to the Petitioner.
7. On April 2, 2018, Petitioner entered into a Repayment Agreement with Respondent that included a one-year probation period. The Repayment Agreement also required the Petitioner to stay current with rent going forward and also gave the Petitioner until October 10, 2018 to become completely current with all housing related accounts.
8. On July 23, 2018, Respondent issued Petitioner a Warning of Probation Status Breach for failure to pay rent.
9. The Petitioner did not respond to the Warning of Probation Status Breach letter.
10. On August 2, 2018, Respondents issued a fourteen (14) day Notice to Vacate for failure to pay rent.
11. The Petitioner was delinquent with her monthly rent payments for the months of June (partial), July and August of 2018 for a total amount due of \$1,314.00.
12. The Petitioner is behind on her water bill in the amount of \$1,449.42.

PRINCIPLES OF LAW

Title 6. Property and Land - Chapter 610 EVICTION AND TERMINATION

610.5-3. *Notice.* This section governs the amount of notice required to evict as well as the manner and form of notice required. When an owner provides notice in compliance with these requirements, the occupant is not entitled to possession or use of the premises after the date of the termination provided in the notice.

(a) *Eviction for Failure to Pay Rents.*

(1) If an occupant fails to pay any installment of rent when due, the occupant's contract is terminated if the owner gives the occupant notice requiring the tenant to pay rent or vacate on or before a date at least thirty (30) calendar days after the giving of the notice and if the occupant fails to pay accordingly.

Comprehensive Housing Division Repayment Agreement No. RP-04-02-18

1. The Nation agrees to halt all termination, eviction and/or money judgment proceedings provided that Tenant complies with the terms of this Agreement and the original Rental Agreement.
2. Tenant understands and agrees that because this Agreement was entered following issuance of a thirty (30) day notice to cure or vacate, that any failure within the next 12 months to make all payments required under this Agreement and the Rental Agreement may result in termination of the Rental Agreement and eviction from the rental premises upon the issuance of a fourteen (14) day notice to vacate – without opportunity to cure the default.
3. Tenant agrees that, by signing this Agreement, Tenant waives all rights to appeal a termination and eviction implemented as a result of a violation of this Agreement.
4. Tenant agrees to make payments totaling \$2,928.42 in order to become current with all past due housing accounts...
5. The Tenant shall become completely current on all housing related accounts, including utility accounts, no later than October 10, 2018.
6. The Nation reserves the right to pursue a termination and eviction and/or money judgment under the Rental Agreement if Tenant subsequently fails to comply with the terms of the Rental Agreement.

ANALYSIS

The testimony and evidence presented by the Respondent regarding the amount of past due rent was not disputed by the Petitioner. The Petitioner offered to pay the remaining balance with her Oneida Per Capita distribution, but the Respondent declined to enter into a stipulation and requested to go forward with the eviction. The Repayment Agreement and the Rental Agreement

both require payment of rent in a timely manner. Also, based on the Repayment Agreement, the Petitioner had to pay rent on time for a period of 12 months, otherwise the Respondent could issue a fourteen (14) day notice to vacate. The Petitioner violated the Repayment Agreement and the Rental Agreement by failing to pay rent for the months of June (partial), July and August of 2018. Because the Petitioner did not stay current with rent after the Repayment Agreement was initiated, the Respondent issued the notice to vacate.

The Petitioner stated she believed she had until October 10, 2018 to become current with all her accounts. While the Repayment Agreement did give the Petitioner until October 10, 2018 to become completely current on all housing related accounts, the Petitioner was still required to make monthly rent payments on time. As a result of the Petitioner failing to pay rent on time for June (partial), July and August of 2018, the Respondent has the right to evict the Petitioner.

Keeping current with utility bills for water is a requirement of the Rental Agreement and is the responsibility of the Petitioner. Failure to keep current with such bill is a breach of the rental agreement and is also a cause for eviction. However, the eviction notice was based on non-payment of rent, so the Court will not address the utility bills as a basis for eviction, but the past due water bill of \$1,449.42 is still the responsibility of the Petitioner.

CONCLUSION OF LAW

The Petitioner is not entitled to avoid the eviction and remain in the home when she violated the Repayment Agreement and the Rental Agreement for failure to pay rent.

ORDER

1. The Petitioner's accounts with Respondent for unpaid rent in the amount of \$1,314.00 are owed to Respondent. Failure to pay is subject to tribal remedy for a debt owed to the Nation.
2. The request to uphold the eviction is granted.
3. The Temporary Restraining Order is lifted effective August 16, 2018.
4. The Respondent is allowed to change the locks on the residence located at 2686 West Point Road, Green Bay, WI 54304 on August 17, 2018.
5. The Petitioner may contact the Comprehensive Housing Division for access to the residence for the purpose of retrieving possessions.

6. The Petitioner shall be responsible for the payment of the past due water bill of \$1,449.42 (plus other amounts due as of August 16, 2018) and any other past due utilities, damages, or property maintenance.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council an order was signed on August 16, 2018.