

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Melissa H. Wade,
Petitioner

v.

Case No: 18-TC-022

Comprehensive Housing Division
Respondents

FINAL DECISION AND ORDER

This case has come before the Oneida Trial Court, Honorable Denice Beans presiding.

Appearing in person: Respondents, Comprehensive Housing Division represented by Attorney Krystal John with Scott Denny.

Appearing by phone: Petitioner, Melissa H. Wade.

BACKGROUND

The Court received a petition for a Temporary Restraining Order to stop the 5-day Termination of the Petitioner's Rental Agreement process for eviction on Melissa Hazel Wade's residence located at 2740 Powless Dr., DePere, WI 54115, by the Comprehensive Housing Division (CHD). The Temporary Restraining Order was granted and a hearing was held on August 20, 2018. At the hearing the Petitioner appeared by phone from a Mental Health Facility. Proof of Service was not in the file and Respondents waived defective service. Respondents then filed a Motion to lift the Temporary Restraining Order. The Court accepted the Motion.

STATEMENT OF THE CASE

The Petitioner is seeking to stop the 5-day Termination of the Rental Agreement and the process for eviction and allow her to stay in the rental unit located at 2740 Powless Dr., DePere, WI 54115.

ISSUE

1. Is the Petitioner entitled to avoid an eviction and secure her Rental Agreement to remain in the home when she violated the rental agreement based on police activity and illegal activity at the rental premise by a household member?

FINDINGS OF FACT

1. The Court has jurisdiction pursuant to Chapter 610, Eviction and Termination, of the Oneida Code of Laws.
2. On September 21, 2017, Petitioner signed a Rental Agreement with Respondents.
3. The Respondents pursued the termination of Petitioner's rental agreement due to police activity and illegal activity at the rental premise by an unauthorized household member.
4. The Respondents complied with all notice requirements in accordance with the Eviction and Termination Law.
5. On August 15, 2018, Petitioner received a warning letter for "POTENTIAL IMMEDIATE TERMINATION OF YOUR RENTAL AGREEMENT".
6. On August 17, 2018, Respondents issued a "FIVE (5) DAY NOTICE TO VACATE – TERMINATION OF RENTAL AGREEMENT" to the Petitioner.
7. The Petitioner filed for a temporary restraining order (TRO) on August 17, 2018 to stay the "FIVE (5) DAY NOTICE TO VACATE – TERMINATION OF RENTAL AGREEMENT" issued by Respondents.
8. The Court accepted the petition for a temporary restraining order (TRO) and placed a stay on the eviction procedure at Melissa H. Wade's residence located at 2740 Powless Dr., DePere, WI 54115.
9. A hearing was held on August 20, 2018 at 2:00 pm.
10. The Respondents appeared in person.
11. The Petitioner appeared by phone stating she was calling from a Mental Health Facility where she is dealing with the situation that occurred at her home.
12. Proof of Service was not in the file, Respondents waived defective service.
13. Attorney Krystal L. John filed a Notice of Representation and a Motion to Lift Temporary Restraining Order with the Court at the start of the hearing.
14. The Court noted the incorrect numbering of the Eviction and Termination Law in two letters noticing the Petitioner that read 7 O.C 710. This was noted as a harmless error. All parties were directed to make corrections to read 6 O.C. 610 in all reference to the Eviction and Termination Law.
15. Petitioner claimed she had no knowledge of and was not involved in the illegal activities conducted by Ricardo Fuentez at the residence located at 2740 Powless Dr., DePere, WI.

16. Petitioner claimed that Ricardo Fuentez was at the residence located at 2740 Powless Dr., DePere, WI to babysit their 5-year-old child while she was at work.
17. On August 14, 2018 Petitioner signed a written statement at the Green Bay Police Department acknowledging that she was aware of the criminal activity occurring within the rental premises located at 2740 Powless Dr., DePere, WI 54115.
18. Criminal Complaint #2018BR005845 was filed in Brown County on August 15, 2018 naming Ricardo Rosales Fuentez as the Defendant and his address as 2740 Powless Drive, in the Village of Hobart, Brown County, Wisconsin.
19. The Rental Agreement makes Petitioner responsible for all activities and conduct occurring on the premises, regardless of knowledge, under section 6 of the Rental Agreement.
20. The Respondents request the Temporary Restraining Order to be lifted effective immediately to allow the locks to be changed as scheduled.

PRINCIPLES OF LAW

Oneida Nation Comprehensive Housing Division – Rental Agreement -

6) Quiet Enjoyment. Landlord agrees to defend the title to the premises and also agrees that Tenant shall peaceably and quietly hold, enjoy and occupy the premises for the duration of this Agreement without any hindrance, interruption, ejection or molestation by Landlord or by any other person or persons whomsoever, except if the requirements of any part of this Agreement are not kept by Tenant. Notwithstanding the foregoing, Tenant and Tenant's assigns are subject to all the laws and rules of the Oneida Nation. Tenant agrees to conduct self, family, friends, visitors and guests in a manner which will not disturb others. Tenant further understands that Tenant is responsible for all activities and conduct occurring on the premises.

15) Household Composition. Tenant shall keep an up to date household composition form on file with Landlord at all times with Oneida Nation enrollment numbers provided where applicable. No more than one (1) family may occupy the premises. Tenant agrees to the(sic) use the premises as living quarters only unless otherwise approved by Landlord.

24) Compliance with Applicable Laws, Rules, Policies and Regulations. Tenant shall comply with all applicable laws, rules, policies, and regulations, specifically including the applicable rental program's rules. A failure to comply with all applicable laws, rules, policies and regulations constitutes a material breach of this Agreement.

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

610.5. Early Contract Termination

610.5-1. *Causes for Early Contract Termination.* The owner may terminate the contract prior to the contract term and evict the occupant, if the occupant:

- (a) Violates the terms of the contract;
- (b) Is alleged to have violated any applicable law or rule; and/or
- (c) Is alleged to have committed one or more nuisance activities.

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.

(c) *Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.* The owner may terminate an occupant's contract based on an alleged violation of an applicable law or rule or if the occupant commits a nuisance act.

(1) In order to terminate based on this section, the owner must have received notice, which may be from, but is not limited to, another occupant, law enforcement agency or a local government's office of the district attorney, which reports:

(A) a violation of an applicable law or rule on behalf of the occupant or in the occupant's unit, or

(B) a nuisance that exists in that occupant's unit or was caused by that occupant on the owner's property. In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant to vacate on or before a date at least five (5) calendar days after the giving of the notice.

(2) The occupant may contest a termination based on a violation of applicable law or rule or nuisance by filing a complaint challenging the basis of the eviction with the Oneida Judiciary.

(3) If the occupant contests the termination prior to the termination date provided in the notice, the eviction is stayed and the contract may not be terminated without proof to the Oneida Judiciary by the owner by the greater preponderance of the credible evidence of the allegation that a violation of law and/or rule and/or nuisance exists in that occupant's unit or was caused by that occupant.

Rule No. 1 – Disposal of Abandoned Personal Property

1.4-1. *Designated Period for Removal of Personal Property.* The initial period designated for removal of personal property following a contract termination is five (5) business days, as provided in section 610.6-1 of the Eviction and Termination law. The initial designated period may be extended in the owner's discretion to a maximum period of fifteen (15) business days from the date of contract termination. The only circumstance under which the timeframe for removal of personal property may be extended beyond the maximum period is in the event of the death of a tenant based on a written agreement executed in the owner's discretion. During the designated period for the removal of personal property:

(a) The owner shall store all personal property within the reclaimed premises and grant access to the former occupant for purposes of removal of personal property.

(b) The only access the owner may grant to the premises is as follows:

(1) To the former occupant for purposes of removal of personal property;

(2) To the owner's maintenance staff for emergency maintenance checks and repairs as may be deemed necessary in the owner's discretion; and/or

(3) To the owner's administrative staff for purposes of assessment of the condition of the premise.

(c) Former occupants may access the reclaimed premises by contacting the owner to schedule an access appointment. Access appointments are limited to business days from 8:00 a.m. to 2:30 p.m., provided that the owner may provide access appointments outside of these limited time periods in its discretion.

ANALYSIS

The Petitioner claims she had no knowledge of and was not involved with criminal activity at her residence and should not have her Rental Agreement terminated. The Respondents submitted the Petitioner's signed Rental Agreement which stated that she understands that she is responsible for all activities and conduct occurring on the premises. The Petitioner further agreed to comply with all applicable laws, rules, policies, and regulations, specifically including the applicable rental program's rules.

Criminal activity at the Petitioner's residence led to charges filed against an unauthorized household member and five charges referred to the District Attorney for follow up charges against the Petitioner. The Petitioner's 5-year-old child was at the residence during the "raid" and was placed with the grandmother for safety. One of the referred charges is Child Neglect. The charges and testimony are documented in the Criminal Complaint (Exhibit C) attached to the *Motion to Lift Temporary Restraining Order* that was filed by the Respondents.

After being interviewed by the Green Bay Police Department Officer the Petitioner signed a written statement acknowledging that she was aware of the criminal activity. This is in opposition to her statement in the Petition to the Court that she had no knowledge of the criminal activity at her residence.

The Court determined, by a greater preponderance of the credible evidence, that a violation of a law occurred in the occupant's (Petitioner's) unit.

CONCLUSION OF LAW

The Petitioner is not entitled to avoid an eviction and secure her Rental Agreement to remain in the home when she violated the rental agreement based on police activity and illegal activity at the rental premise by a household member.

ORDER

1. The request to lift the Temporary Restraining Order is granted effective immediately.
2. The Respondents may proceed with the Termination of the Petitioner's Rental Agreement.
3. The Respondents may change the locks on the residence located at 2740 Powless Dr., DePere, WI 54115 as scheduled.
4. The Petitioner may contact the Comprehensive Housing Division for access to the residence for retrieving possessions following the procedures in Rule #1 Disposal of Abandoned Personal Property.

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 22, 2018.