

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Tracey & Richard Denn,
Petitioners

v.

Case No: 18-TC-023

Comprehensive Housing Division
Respondent

FINAL DECISION AND ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding. *Appearing in person:* Petitioners Tracey and Richard Denn, Petitioner's Counsel, Wesley T. Martin, Jr. and Tsyoslake House, Respondent Dana McLester, and Respondent's Attorney, Krystal John.

BACKGROUND

On August 22, 2018, the Court received a petition for a Temporary Restraining Order (TRO) to stop the eviction process that was initiated by the Comprehensive Housing Division (CHD) on Tracey and Richard Denn who resided at W337 Cornelius Circle, Oneida, Wisconsin, 54155. The TRO was granted, and a hearing was held on August 23, 2018. On August 23, 2018, Respondent waived defective service and motioned to lift the TRO. In addition, Petitioners requested that the hearing be rescheduled. The Court granted the motion to reschedule and a hearing was held on August 29, 2018.

STATEMENT OF THE CASE

Petitioner is seeking a restraining order to stop a 5-day Notice to Vacate - Termination of Residential Lease and the process for eviction, allowing Petitioners to stay at W337 Cornelius Circle, Oneida, WI 54155.

ISSUE

1. Are Petitioners entitled to avoid an eviction and remain in the home when Petitioners violated the Residential Lease based on police contact and illegal activities by a household member on the Residential Lease?

FINDINGS OF FACT

1. The Court has jurisdiction pursuant to Chapter 610 of the Oneida Code of Laws.
2. On April 18, 2013, Petitioners signed a Residential Lease with Respondent.
3. The Court accepted the petition for a TRO and placed a stay on the eviction involving Tracey and Richard Denn's residence who resided at W337 Cornelius Circle, Oneida, Wisconsin 54155.
4. Respondent pursued the termination of Petitioners' Residential Lease due to police contact and illegal activity by a household member on the lease.
5. Respondent complied with all notice requirements in accordance with the Eviction and Termination Law.
6. Criminal Complaint #2018BR005844 was filed in Brown County on August 15, 2018 naming Richard N. Denn as the Defendant and his address as "W337 Cornelius Circle, in the Village of Oneida, Brown County, Wisconsin."
7. On August 15, 2018, Petitioners received a warning letter for "POTENTIAL IMMEDIATE TERMINATION OF YOUR RESIDENTIAL LEASE" from Respondent.
8. On August 17, 2018, Respondent issued a "FIVE (5) DAY NOTICE TO VACATE – TERMINATION OF RESIDENTIAL LEASE" to Petitioners.
9. Petitioners filed for a TRO on August 22, 2018 to stay the "FIVE (5) DAY NOTICE TO VACATE – TERMINATION OF RESIDENTIAL LEASE" issued by Respondent.
10. Respondent filed Motion to Lift Temporary Restraining Order on August 23, 2018.
11. The Eviction and Termination Law allows the Respondent to terminate the contract prior to contract term and evict Petitioners if there is an alleged violation of any applicable law or rule.
12. The Court deems Petitioners' demand for discovery to be a motion for discovery.
13. Petitioners request a stay on the eviction to allow for time to file an appeal.

PRINCIPLES OF LAW

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.

ANALYSIS

Jurisdiction.

Petitioners entered a Residential Lease with the Respondent on April 18, 2013. The Oneida Nation currently does not exercise jurisdiction over criminal matters that may impact a Residential Lease. However, the Oneida Nation is a Public Law 280 Nation and as a result,

Wisconsin laws apply to criminal matters within the exterior boundaries of the Oneida reservation. Therefore, Wisconsin criminal laws are applicable laws under 6 O.C. 610.5-1(b). Therefore, Petitioners violated criminal drug laws and are subject to eviction pursuant to the Nation's Eviction and Termination Law.

Pertaining to Petitioner's request to stay the eviction to allow for an extension to file an appeal, the Trial Court will hear cases in which it has jurisdiction over. In this case, the Trial Court is the lower hearing body. The Trial Court will not hold open any action for parties to initiate action within another Court, specifically, the Appellate Court.

Applicable Laws Addressing Eviction and Termination.

Pursuant to section 801.2-6 of the Judiciary Law, the Court may refer to state statutes for guidance if there is not a specific Oneida Nation law regarding the matter. In this case, the Nation's Eviction and Termination Law specifically addresses when Respondent may initiate a termination of the Residential Lease due to an alleged violation of any applicable law or rule. Because the Nation has a law that addresses evictions and terminations, the State of Wisconsin's eviction law does not apply.

Discovery.

Petitioners requested discovery; however, all discovery requested was already submitted to both the Petitioners and the Court. Therefore, the request is moot.

By law, the temporary restraining order process is an accelerated one. If a TRO is granted, it is effective for 14 days and, as a result, there is a short window to hold a hearing. Due to this short time frame, delayed discovery demands are not an option. It is vital that both parties submit all documentation prior to the hearing to ensure parties possess all documentation, resulting in the Court adhering to the 14-day requirement. In the future, the Legal Resource Center should reach out to the CHD prior to a TRO hearing to obtain requested documentation that has not already been provided.

CONCLUSION OF LAW

Petitioners are not entitled to avoid eviction and termination of the Residential Lease and to remain in the home as Petitioners violated the Residential Lease based on police contact and illegal activities by a household member on the lease.

ORDER

1. Petitioners' motion for discovery is denied.
2. Petitioners' motion to vacate or dismiss the eviction is denied.

3. Petitioners' motion to stay the eviction to allow for an extension to file an appeal is denied.
4. Respondent's motion requesting to lift the TRO is granted effective August 30, 2018.
5. Respondent may proceed with the termination of the Petitioners' Residential Lease.
6. Respondent may change the locks on the residence located at W337 Cornelius Circle, Oneida, Wisconsin 54155 on August 30, 2018.
7. Petitioners may contact the CHD for access to the resident during the period until the home is sold.
8. Petitioners may work with CHD negotiating fair market value of equity and home improvements or selling of the home at W337 Cornelius Circle, Oneida WI 54155 to a potential buyer.

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 30, 2018.