

Oneida Tribal Judicial System

Onayote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

ONEIDA TRIBAL JUDICIAL SYSTEM TRIAL COURT

**Mike Habeck and,
Tina Deterville,
Petitioners**

Docket No: 08-TC-078

v.

Date: August 6, 2008

**Oneida Housing Authority,
Respondent**

Decision

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, Cristina Danforth, and Stanley R. Webster, presiding.

I Background

This case is an appeal of a housing termination.

On June 30, 2008 Petitioners, Mike Habeck and Tina Deterville, filed an appeal of the decision of the Respondent, Oneida Housing Authority, for the 14 day termination of their lease.

Petitioners received the notice of termination of their lease on June 18, 2008 from the Interim Executive Director, claiming Petitioners have the right to file an appeal their decision with the Oneida Appeals Commission. Therefore, a pre-trial hearing was scheduled for July 29, 2008.

II Analysis

According to Petitioner's Lease Agreement signed by Petitioners on June 8, 2005:

Article N7(d), A decision of the Board of Commissioners will be in writing within 7 days of the hearing. All decisions will be sent by registered mail. The written decision shall state: a. The

reason for the decision, b. inform the tenant that he/she has the right to appeal to the State Circuit court having jurisdiction in the proper county of venue.

This section gives Petitioner the right to appeal the decision of Board of Commissioners to the State of Circuit court. The Oneida Tribe took jurisdiction of all tribal housing appeals with the Mary Whitewing, Daniel Skenandore and Stacy Krenzke v. Oneida Housing Authority 00-TC-21 and 00-TC-022, June 4, 2001. This case transferred all appeals to the Appeals Commission. The Oneida Business Committee passed the Emergency OHA Ordinance 7-18-07-A and furthermore, the Housing Emergency Amendments 1-08-08-B, which directed the Oneida Housing under the Tribe's General Manager, Debbie Thundercloud. Therefore, Petitioner's appeal is in the proper forum.

At the July 29, 2008 pre-trial hearing, Respondents failed to appear. On July 3, 2008 Attorney Robert D. Sweeney filed his notice of representation for Respondents. The court found Respondents in default in accordance with Rules of Civil Procedure, Rule 16 (B). Petitioners claim they have four children in the home. Petitioners contend even if the eviction would stand they would need time to secure other living arrangements. Petitioners requested 60-days to fulfill rental arrears and utility payment arrangements. Due to Respondent's non appearance the court granted the 60-days to cure rental arrears and make utility payment arrangements. In addition, the court explained at the end of the 60-days these terms must be satisfied or Petitioners may be faced with another eviction.

On June 30, Respondent's Attorney Robert D. Sweeney filed a request with the court to not issue a default judgment in this case. Attorney Sweeney claims accordance with Rule 16(E) the trial court may overturn any default judgment for "good cause". Attorney Sweeney indicated he appeared for another hearing here at 9:00 a.m., but that this case was not included on his calendar. This court strives to provide fairness to both parties. In the past, this court has not called either party to remind them of a hearing. Therefore, Attorney Sweeney's request is denied. However, the court's decision to not issue a default judgment is based solely on the merits of the case. In the future, it is recommended that each party review their obligations to ensure promptness.

III Decision

Petitioners are granted 60 days to cure their arrears. During this time, Respondent may not take any action to prevent Petitioners from occupying their home. This case shall be reviewed in 60 days.