

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Desiree W. Stevens,
Petitioner

v.

Case No.: 21-TC-003

Comprehensive Housing Division,
Respondent

Date: March 29, 2021

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.
Appearing in-person: Petitioner, Desiree W. Stevens; Attorney Gerald L. Hill, representing Petitioner; Respondent, Attorney Krystal L. John, representing the Comprehensive Housing Division.

BACKGROUND

Petitioner filed a Title 6 Property and Land complaint challenging her eviction for an alleged violation of an applicable law.

ISSUE

Is the Petitioner entitled to continue to reside at 2875 Commissioner Street, Oneida, WI 54155, when there was an alleged violation of an applicable criminal law on the property?

FINDINGS

The Court finds as follows:

1. The Court has subject matter, personal, and territorial jurisdiction over this matter.
2. Notice was provided to all those entitled to notice.
3. On February 23, 2021, Respondent sent Petitioner a 5-day Notice to Vacate – Termination of Rental Agreement due to criminal activity on the property of 2875 Commissioner Street, Oneida, Wisconsin 54155.
4. Petitioner timely filed a complaint with the Oneida Judiciary on February 25, 2021.
5. A hearing was held March 18, 2021 at 1:30 p.m.
6. At the hearing, Respondent submitted evidence in which Petitioner admitted to using illegal drugs and maintaining illegal drug paraphernalia.
7. Respondent complied with all requirements of 6 O.C. 610.5-3.

PRINCIPLES OF LAW

6 O.C. §610.5-3(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.

6 O.C. §610.5-3(c)(1)(a)

Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.

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.

Eviction and Termination Law

"Nuisance" means an occupant's interference with another occupant's use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations (as defined in the rules which the Land Commission and the Comprehensive Housing Division shall jointly establish), execution of search warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

ANALYSIS

In accordance with the Nation's Eviction and Termination law, Respondent may evict a tenant when Respondent receives notice from a law enforcement agency that reports a violation of an applicable law or a nuisance act has been committed by the occupant. The focus of Petitioner's challenge to eviction stems from Respondent's 5-day Notice to Vacate.

5-day Eviction Notice:

Respondent terminated Petitioner's Rental Agreement pursuant to 6 O.C. 610.5-3(c), based on *criminal activity occurring on the premise*.

Here, Petitioner argues Respondent's Notice to Vacate is flawed in that the reason for eviction does not coincide with the alleged violation, but instead, an unsubstantiated assertion as the Oneida Police Department (OPD) report lacks an identified crime. Petitioner also alleges Respondent failed to show how the decision to vacate was reached, the 5-day notice to vacate was unsigned, and Petitioner alleged the decision to evict is vague in that it was required to protect the safety of other tenants, and by not acting may jeopardize future funding from Native American Housing Assistance and Self-determination Act (NAHASDA).

Respondent states 6 O.C. §610-5-3(c)(1) requires Respondent to first provide notice to the Petitioner. Second, Respondent may terminate Petitioner's contract based on an *alleged* violation of an applicable law, rule or nuisance act committed by Petitioner. At the contested hearing, the Court accepted Respondent's exhibits consisting of OPD Police reports from the Petitioner's residence and OPD body cam footage of the incident on February 18, 2021.

Respondent has met the notice requirement in that Petitioner received a 5-day Notice to Vacate – Termination of Rental Agreement. Respondent further argues a criminal charge or conviction is not required to terminate Petitioner's Rental Agreement, but instead all that is required is proving a violation of applicable law, rule or nuisance act committed by Petitioner by the greater preponderance of the credible evidence.

Respondent supports their claim that a violation occurred as Petitioner admitted to the use of methamphetamine on the day of the incident. Methamphetamine is an illegal drug; therefore, constitutes a violation of law. In accordance with 6 O.C. 610.5-3(c)(1)(a), Petitioner violated the law based on the admission of illegal drug use. What is more compelling to the Court is that the body cam footage shows illegal drug paraphernalia at Petitioner's residence, as well as tinfoil

with burned marks and cut straws; all of which, OPD Sergeant Vande Hei testified in his experience is common with drug usage.

Respondent also submitted an OPD Police report on the night in question to the Court, authored by OPD Sergeant Vande Hei. Sergeant Vande Hei categorized the report as a disturbance. According to the report, Sergeant Vande Hei believed Petitioner was under the influence of drugs based on his conversation with Petitioner and observance of a syringe, a piece of foil with burnt residue, and a cut straw on a table. Respondent makes the additional argument that on the night in question, Petitioner committed a nuisance act by engaging in illegal drug activity; therefore, grounds for the CHD to terminate Petitioner's Rental Agreement exist. Respondent met the burden of proving the alleged claims by a greater preponderance of the credible evidence; therefore, Petitioner may be evicted from 2875 Commissioner Street, Oneida, Wisconsin 54155.

Petitioner further claims the CHD was not transparent in how they reached their decision to evict. Respondent asserts the Termination and Eviction law does not require Respondent to identify how they reached their decision, and the Court agrees.

Last, Petitioner asserts the 5-day Notice to Vacate was flawed in that the CHD did not sign the notice. However, the Eviction and Termination Law does not make signature of a 5-day Notice to Vacate a requirement of such notice. Furthermore, the Court does not find that the remedy for this alleged defense would lead to a dismissal of the eviction and does find that all the requirements in the Eviction and Termination law have been satisfied.

CONCLUSION OF LAW

The Petitioner is not entitled to continue to reside at 2875 Commissioner St., Oneida, WI 54155.

ORDER

1. The stay on eviction is lifted.
2. The eviction is upheld, and the contract is terminated.
3. Respondent may change locks and remove occupant effective the date of this order.
4. Petitioner shall have 15 days from the date of this order to collect her belongings from the home by contacting Respondent.

IT IS SO ORDERED. By the authority vested in the Oneida Judiciary Trial Court pursuant to BC Resolution 03-13-19-C, this Order is signed on March 29, 2021.



John E. Powless III, Trial Court Judge

