

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Elizabeth House,
Petitioner**

v.

Case No: 22-TC-005
Date: April 19, 2022

**Oneida Comprehensive Housing Division,
Respondent**

FINAL ORDER

This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

Appearing in Person: Petitioner, Elizabeth House, represented by Advocate Julie Denny.
Attorney Krystal John and Scott Denny, representing Respondent.

STATEMENT OF THE CASE

The Petitioner filed a Title 6 Property & Land Complaint challenging her eviction for a violation of law.

ISSUE

Is the Petitioner entitled to continue to reside at N6456 Evergreen Dr, Oneida, WI 54155, when there was an alleged violation of an applicable law that criminal activity has occurred on the property?

FINDING OF FACTS

1. The Court has jurisdiction pursuant to Chapter 610, Eviction and Termination, of the Oneida Code of Laws.
2. Notice was provided to all those entitled to notice.
3. A 5 Day Notice to Vacate – Termination of Rental Agreement due to criminal activity occurring on the property was received by Petitioner on March 25, 2022.
4. On March 29, 2022, Petitioner filed a complaint contesting the eviction.
5. A Contested hearing was held on April 13, 2022 and continued April 15, 2022.

6. The Respondent declined Peacemaking.
7. Kevin A. Kaquatosh, Jr., was an adult co-head of the household with Elizabeth House.
8. On March 16, 2022, at approximately 4:45 p.m., Officers Ralph Powless and Edward Metoxen, along with other officers, responded to a suspected overdose call.
9. The 911 call was made by Mr. Kaquatosh's brother, Daniel Perez.
10. During the 911 call, Mr. Perez stated, "My brother, I think he is OD-ing."
11. When officers arrived, Mr. Kaquatosh was lying on the floor, unresponsive with a white foam-like substance coming from his mouth.
12. Officers administered 4-doses of 4mg Narcan Nasal Spray and completed chest compressions but were unable to revive Mr. Kaquatosh.
13. Officer Metoxen located a green hollowed-out pen on the kitchen table near where Mr. Kaquatosh was located. The green pen had a burnt brown residue on one end and a powder substance inside of it. A lighter was next to the hollowed-out pen.
14. Officer Metoxen tested the residue from the green hollowed-out pen with a fentanyl reagent test kit. The results were inconclusive. The substance was sent to a laboratory for further testing. The results were not available at the time of the hearing.
15. Mr. Perez fled the scene after officers arrived. He was apprehended the next day with fentanyl in his possession.
16. The Respondent complied with all requirements under Title 6 O.C. Chapter 610 Eviction and Termination, Section 610.5-3.

PRINCIPLES OF LAW

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:

- (b) Is alleged to have violated any applicable law or rule.

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.

- (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

The Respondent may evict a tenant when the Respondent receives notice from a law enforcement agency that reports a violation of applicable law on the Petitioner's property. Here, the Respondent received a report from the Oneida Police Department (OPD) about an incident that occurred on March 16, 2022 at the Petitioner's residence located at N6456 Evergreen Dr, Oneida, WI. 54155. The incident involved a suspected drug overdose death and that illegal drug paraphernalia was found in the home. Both Officers, Powless and Metoxen, responded to the call. Officer Powless has been an OPD officer for 6 years. Officer Metoxen has been an OPD officer for 10 years. Both officers received drug and drug overdose training on an annual basis throughout their time working for OPD. Officer Metoxen testified that based on his experience, training and the circumstances, that it appeared to be a drug overdose. First, Officer Metoxen found a green hollowed-out pen on the kitchen table near where Mr. Kaquatosh was located. The green pen had a burnt brown residue on one end and a powder substance inside. A lighter was next to the hollowed-out pen. Officer Metoxen testified that the hollowed-out pen and lighter are commonly used for illegal drugs. Officer Metoxen tested the substance from the green hollowed-out pen with a fentanyl reagent test kit. The results were inconclusive and the sample was sent to the laboratory for further testing. Second, Officer Metoxen testified he is familiar with the person who made the 911 call. The caller, Mr. Kaquatosh's brother, Daniel Perez, is a known drug user. Third, Mr. Perez stated during his 911 call, "My brother, I think he is OD-ing." Fourth, Mr. Perez fled the scene after police arrived. He was apprehended the following day with fentanyl in his possession. Finally, Officer Metoxen testified that the kitchen faucet in the home was running when police arrived on the scene. He testified that faucets running are common on calls involving illegal drugs because drugs are often flushed down the drain. For the above reasons, the Court finds, by the greater preponderance of the credible evidence, that the allegation that a violation of law occurred at Petitioner's home is substantiated.

The Petitioner did not dispute the police report findings, but stated she was not home when the incident occurred, nor did she give permission for drugs or drug paraphernalia to be brought into her home. While this may be true, it is not a valid defense to eviction based on an alleged violation of law. In this case, OPD reported that an alleged criminal activity occurred on the property involving the co-head of household, Mr. Kaquatosh. As a result, the Respondent is entitled to evict Petitioner and the stay on the eviction must be lifted.

Petitioner argued Respondent should have used their discretion to not terminate the rental agreement and evict her. The decision to use or not use such discretion is, however, the choice of Respondent. Here, Respondent chose to forgo the option of offering additional conditions or guarantees for Petitioner to remain in the home. As a result, Petitioner's argument fails, and Respondent is entitled to evict.

Because Respondent is entitled to evict Petitioner and the stay is lifted, Petitioner must vacate the premises on or before April 25, 2022, at 10:00 a.m. If Petitioner still has personal property in the premises after the locks are changed, Petitioner will have up to fifteen (15) business days to remove her belongings. Petitioner is responsible for contacting the Oneida Comprehensive Housing Division to schedule times to access the premises for the removal of personal property.

CONCLUSIONS OF LAW

The Petitioner is not entitled to continue to reside at N6456 Evergreen Dr, Oneida, WI. 54155.

ORDER

1. The eviction is upheld.
2. The Petitioner must vacate the premises located at N6456 Evergreen Dr, Oneida, WI. 54155 on or before April 25, 2022 at 10:00 a.m. when the locks will be changed.
3. If Petitioner is unable to remove all personal property from the premises before 10 a.m. on April 25, 2022, Petitioner shall have until May 17, 2022, at 4:00 p.m. to remove any remaining personal property. Petitioner is responsible for calling the Oneida Comprehensive Housing Division to schedule times to access the premises for the removal of personal property.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council this Order signed on April 19, 2022.

Layatalati Hill, Chief Trial Court Judge