

**ONEIDA JUDICIARY**  
Tsi nu téshakotiya?tolétha?

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**TRIAL COURT**

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**Shanna Torres,  
Petitioner;**

**v.**

**CASE NO: 22-TC-007  
DATE: October 7, 2022**

**Oneida Comprehensive Housing Division,  
Respondent.**

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**ORDER**

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This case has come before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

*Appearing in person:* Petitioner, Shanna L. Torres; Respondent's attorney, Krystal John, on behalf of the Oneida Comprehensive Housing Division.

**BACKGROUND**

On September 2, 2022, Petitioner, Shanna Torres, filed a complaint with the Trial Court to contest the Oneida Comprehensive Housing Division's decision to not renew her income based rental agreement and evict her on August 17, 2022. At the September 7, 2022 pre-trial hearing, Respondent (Housing Division) made a motion to dismiss for failure to state a claim upon which relief can be granted, citing 8 O.C. 803.9-2(a)(6). The Court scheduled a pre-trial hearing on the motion and ordered a stay on the eviction, allowing Ms. Torres and her four minor children to continue residing there until this matter is adjudicated. At the October 4, 2022 pre-trial hearing, the Court granted the Housing Division's motion to dismiss and upheld the Housing Division's nonrenewal of the Tenant's rental agreement and eviction. As a result, the Tenant and her four minor children are ordered to vacate the premises on or before 11:59 a.m. on October 7, 2022, which is when the Housing Division will change the locks.

## ISSUE

1. Is Petitioner (Tenant) entitled to continue to reside at N5848 Sand Hill Court, De Pere, WI 54115 after the period to cure violations making her ineligible for the income based rental program expired?
2. Did Respondent (Housing Division) properly comply with the eviction procedures?

## ANALYSIS

This case arises from a complaint filed September 2, 2022 by Shanna Torres, a tenant in the Oneida Comprehensive Housing Division's income-based rental program, contesting her eviction and the nonrenewal of her rental agreement. Ms. Torres claims her rental agreement should be renewed because she meets the income requirements and her eviction was wrongful. The Housing Division argues Ms. Torres has no legal claim to contest either of her claims because she failed to show the Housing Division did not comply with the rental agreement or Oneida Nation law. The Housing Division moved to dismiss this case for failure to state a claim upon which relief can be granted. To state a claim to contest the nonrenewal of a rental agreement and eviction, Ms. Torres must plausibly allege (1) that she cured or corrected the issues making her ineligible for the renewal of her rental agreement before expiration of the 30-day cure period; and (2) the eviction procedures were not complied with. Because Ms. Torres did not cure the issues to restore her eligibility in the program before the period to cure expired and did not allege any facts showing the eviction process was not complied with, this case is dismissed and the Housing Division's decisions for nonrenewal of the rental agreement and eviction are upheld.

A motion to dismiss under O.C. 803.9-2(a)(6) of the Oneida Rules of Civil Procedure seeks to dismiss a claim "only when it is quite clear that under no conditions can the Petitioner recover."<sup>1</sup> The complaint must show facts which give rise to the cause of action.<sup>2</sup> Finally, a motion to dismiss is considered on the pleadings only; matters outside the pleadings are not considered.

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<sup>1</sup> See, *Wilson v. Continental Insurance Co.*, 274 N.W. 2d 679, 317-18 (Wis. 1979).

<sup>2</sup> *Id.*

First, Ms. Torres did not cure or correct the issues making her ineligible for renewal of her rental agreement before the 30-day cure period expired. The Housing Division may terminate a rental agreement by determining the tenant fails to meet income requirements and owes debt to a utility provider or the Housing Division and after giving the tenant at least 30 days to fix the issues to be reinstated in the program. Here, the Housing Division determined Ms. Torres was not eligible for the program because she: (1) did not meet minimum income requirements, (2) owed more than \$200.00 to a utility provider, and (3) owed money to the Housing Division for tenant damages of \$400.60 and rent of \$500.00. The income-based rental program is governed by O.C. 611, Rule #2 – *Income Based Rental Program Eligibility, Selection and Other Requirements*. Eligible applicants enter into a written rental agreement with the Housing Division that is limited to a 12-month term; renewal of the agreement requires tenants to complete an annual rental agreement renewal. Eligibility for renewal requires a tenant to (a) meet a minimum household income of \$7,800.00 per year; (b) have no outstanding debts to a utility provider greater than \$200.00; or (c) owe no prior debt to the Housing Division. After determining that Ms. Torres failed to meet income requirements and owed debt as stated above, the Housing Division entered into a 90-day limited term rental agreement with Ms. Torres, giving her until July 1, 2022 to fix the issues or be evicted. When Ms. Torres failed to fix the issues by July 1, 2022, the Housing Division served Ms. Torres with a 30-day notice giving her until August 15, 2022 to cure the issues, vacate the premises or be evicted. Under O.C. 610.6-1, if an tenant fails to vacate the premises following notice of eviction based on the non-renewal of a rental agreement, the Housing Division may take possession of the premises by calling the Oneida Police Department to change the locks on the unit. Here, the Housing Division served Ms. Torres with a 30-day notice on July 15, 2022 that required her to fix the issues or vacate the premises on or before August 15, 2022 or be evicted. On August 15, 2022 when Ms. Torres failed to cure her ineligibility issues or vacate the unit, the Housing Division called the Oneida Police Department to change the locks which occurred on August 17, 2022. The Housing Division posted a reclaim notice on Ms. Torres's door. The notice stated the Housing Division took possession of the unit and provided her until September 8, 2022 to remove her personal belongings. In response, Ms. Torres claims she fixed the issues before the expiration date by submitting paystubs to the Housing Division at 4:31 p.m. on August 15, 2022, which was the last day of the cure period. While the Housing Division acknowledged it received paper copies of the paystubs from Ms.

Torres after 4:30 p.m. on August 15, 2022, her reported income was not enough to meet the income requirements. The Housing Division showed that it used the information to calculate estimated annual wages of \$4,304.30 combined with child support of \$208.56 to calculate Ms. Torres's income eligibility. Because Ms. Torres's income was \$4,512.86, the Housing Division determined that she did not meet the income requirement of \$7,800.00 as required by Oneida law. As a result, the Housing Division proceeded with eviction.

Next, Ms. Torres claimed she meets the income requirements because she believed those requirements are waived so long as she is a student at Northeast Wisconsin Technical College (NWTC) and enrolled in the Wisconsin Foodshare Employment and Training (FSET) program. Ms. Torres claimed she received this waiver at an earlier time but provided no information to verify her claim. However, the Housing Division argued that such waivers were provided as part of temporary emergency policies during the COVID pandemic period, but those emergency policies ended, and no waiver policy or rule currently exists. Ms. Torres also argued that proof of her 2021 tax records demonstrates she meets income requirements. However, the Housing Division argued that tax records are not considered proof of ongoing income; income eligibility is determined by using actual wages from a tenant's active employment to calculate income which is used to impute or estimate probable earnings for the year.

Finally, the Housing Division may evict a tenant when the Division complies with procedures governing evictions. Under O.C. 610.6, *Failure to Vacate Following Notice of Eviction or Contract Expiration*, if a tenant fails to vacate the premises following notice of eviction, the Housing Division may take possession of the unit by changing the locks. In the event the tenant has left personal belongings in the unit, the Housing Division will allow the tenant reentry up to five business days and not more than 15 business days to remove their belongings. Here, the Housing Division served Ms. Torres with a 30-day notice on July 15, 2022. The Housing Division posted the notice on the door of Ms. Torres's unit, as well as sending it by certified mail. At the hearing, the Housing Division said the certified letter was returned to the Housing Division after attempts to deliver it to Ms. Torres were unsuccessful. Even though Ms. Torres did not pick up the certified letter, the Housing Division argued that the law requires the notice to be mailed and does not require proof of receipt. Thus, the Housing Division satisfied requirements in the law when it posted the 30-day notice to cure, vacate, or eviction on Ms. Torres's door in

addition to also mailing the notice by certified mail. Ms. Torres provided no facts showing she did not receive the notice or explain reasons for failing to respond to attempts to deliver the notice by certified mail.

In conclusion, Ms. Torres failed to fix the violations to be reinstated in the rental program before the cure period expired. Because Ms. Torres provided no facts showing that the Housing Division did not act within the requirements of the law, the Court grants the Housing Division's motion to dismiss for the failure to state a claim upon which relief is granted. Additionally, the Housing Division's decision to not renew her rental agreement and evict her from the premises are upheld. As a result, Ms. Torres must vacate the unit on or before 11:59 a.m. Friday, October 7, 2022, when the locks will be changed. Starting October 10, 2022, Ms. Torres will be provided reentry to the premises to remove personal belongings. Ms. Torres must remove all personal belongings by or before 11:59 a.m. on October 28, 2022. Finally, within 30 days, the Housing Division will determine costs to be owed by Ms. Torres for rent, utilities and other expenses, including expenses for the period when she was allowed to reside in the premises after she was initially locked out on August 17, 2022.

Because the motion to dismiss is dispositive, the Court will not address the Housing Divisions two other motions: a motion for reconsideration based on a mistake of law and a motion to immediately dissolve the stay issued by the Court allowing Ms. Torres reentry to the premises after she was evicted.

### **FINDING OF FACTS**

1. The Court has jurisdiction pursuant to the Oneida Code of Laws, Chapter 610, Eviction and Termination, and Chapter 611, Rule #2 – Income Based Rental Program Eligibility, Selection and Other Requirements.
2. Notice was provided to all those entitled to notice.
3. The Oneida Comprehensive Housing Division (CHD) and Ms. Torres entered into a 90-day limited term rental agreement giving Ms. Torres time to cure violations so she could be reinstated into the rental program. The limited term rental agreement expired on July 1, 2022.
  - a. Ms. Torres failed to correct the violations before the agreement expired on July 1, 2022.

4. On July 15, 2022, the Oneida Comprehensive Housing Division issued a 30-day notice giving Ms. Torres more time to cure the violations, vacate the premises, or be evicted. The notice was called, “30 Day Notice to Cure or Vacate – Ineligibility for Rental Agreement Renewal.” The noticed instructed Ms. Torres to cure the violations, vacate by August 15, 2022, otherwise she would be evicted.
  - a. The July 15, 2022, notice specified the following violations:
    - i. No income reported. Your household does not meet the minimum requirements required by O.C. 611, Rule #2.4-3;
    - ii. WPS current balance of \$330.12. Your household has outstanding debt owed to a utility provider in excess of \$200.00, prohibited by O.C. 611, Rule#2.4-4; and
    - iii. Current rent balance of \$500.00 and current balance of other charges (tenant damages) of \$400.60. Your household has a past due balance owed to CHD required by O.C. 611, Rule #2.4-4.
  - b. The July 15, 2022 notice specified that Ms. Torres must correct the violations or vacate the premises on or before August 15, 2022 or, be evicted. If evicted, the locks to the premises would be changed by CHD on August 16, 2022. Additional information included:
    - i. If evicted, the Tenant would be given until September 8, 2022 to remove all personal belongings.
5. The CHD sent the July 15, 2022 notice to Ms. Torres by certified mail, as well as posting it to the front door. The certified letter was returned to the CHD after attempts to deliver the notice to Ms. Torres were unsuccessful.
6. On August 15, 2022, at 4:31 p.m., Ms. Torres submitted paper copies of her paystubs to the CHD.
  - a. Based on the paystubs and child support, the CHD determined that Ms. Torres did not meet the income requirements. CHD’s determination was based on using the paystubs to estimate Ms. Torres’s annual wage earnings of \$4, 304.30 plus child support \$208.86. for total income \$4,512.86.
7. On August 17, 2022, Ms. Torres was evicted from her premises and the locks changed.
  - a. The CHD posted a Reclaim Notice on the door of the unit at N5848 Sand Hill Court,

De Pere, WI 54115.

- i. The reclaim notice stated that the CHD reclaimed possession of the property and the locks were changed.
  - ii. The notice also stated that Ms. Torres must remove all personal belongings by September 8, 2022.
8. On September 2, 2022, Ms. Torres filed a claim with the Trial Court contesting (a) the decision by CHD to not renew her rental agreement, and (b) her eviction.
9. On September 7, 2022, at a pre-trial hearing, the Court ordered a stay on the eviction to allow Ms. Torres and her four minor children reentry to the premises to continue residing there until her claim is adjudicated.
10. On October 4, 2022, a pre-trial hearing was held on the CHD's motion to dismiss for failure to state a claim upon which relief can be granted.
  - a. The CHD declined peacemaking.

### **PRINCIPLES OF LAW**

#### **Title 6. Property and Land – Chapter 610**

##### **610.6. Failure to Vacate Following Notice of Eviction or Contract Expiration**

610.6-1. *Changing of Locks and Removal of Occupant.* If an occupant fails to vacate the premises following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner shall secure and take possession of the premises once the timeframe in the notice of termination has expired.

- (a) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida Police Officer be on the scene while the locks are being changed.
- (b) In the event the occupant has left personal property in the home, the occupant may retrieve the said personal property by contacting the Comprehensive Housing Division staff listed on the notice of termination. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days, where a business day is Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

**Title 6. Property and Land – Chapter 611, Rule #2 – Income Based Rental Program Eligibility, Selection and Other Requirements**

2.4-3. *Minimum Income.* Applicants shall meet a minimum household income of \$7,800 per year.

2.4-4. *Outstanding Debts.* Applicants for a rental agreement may not have a past due balance greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior debt owed to the Comprehensive Housing Division.

2.8-4. *Immediate Notice of Change in Household Composition and/or Income.* Tenants shall immediately notify the Comprehensive Housing Division of any change in the tenant's household composition and/or income, regardless of the date scheduled for the annual renewal. Annual Inspection and Rental Agreement Renewal.

2.8-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month term. Tenants wishing to remain in the property are required to complete the annual rental agreement renewal by verifying that the household continues to meet all eligibility requirements contained in the Landlord-Tenant law and rules excluding the maximum income requirement provided in article 2.4-2. Once continued eligibility is verified, tenants that remain eligible are required to sign a rental agreement renewal.

(a) The Comprehensive Housing Division may, in its discretion, decline renewal of a rental agreement if it determines that the renewal is not in the best interest of the Nation.

(b) In the event a tenant fails to enter a rental agreement renewal and has not vacated the rental premises within thirty (30) calendar days of the expiration of the rental agreement, the Comprehensive Housing Division shall initiate the eviction process pursuant to the Eviction and Termination law.

2.8-6. *Ineligibility Due to Renewal or an Update of Household Information.* Comprehensive Housing Division staff shall provide tenants that become ineligible to participate in the income based rental program based on a renewal or update of household information with notice specifying the cause of the ineligibility and, if possible, how the household may reinstate eligibility.

(a) *Ineligibility Due to Renewal.* In circumstances where the tenant learns of ineligibility as part of the annual renewal, Comprehensive Housing Division staff shall include in the notice of ineligibility that renewal of the rental agreement is not available at such time and that the tenant is entitled to a minimum of a thirty (30) day notice to cure, by reinstating eligibility, or vacate.



(c) Limited Term Rental Agreements. Limited term rental agreements are available in accordance with article 2.8-6(a) and (b) of these rules and section 611.9-4 of the Landlord-Tenant law. At a minimum, limited term rental agreement shall include:

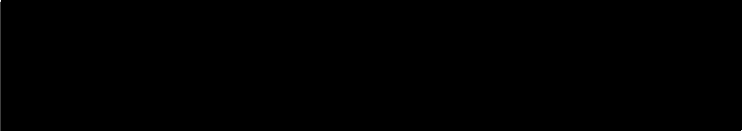
- (1) The date of the original notice of ineligibility;
- (2) An explanation that the tenant has thirty (30) calendar days to reinstate eligibility;
- (3) As applicable, an explanation that if eligibility is not timely reinstated, that the limited term rental agreement takes the place of the thirty (30) calendar day notice to cure or vacate required by the Eviction and Termination law; and
- (4) An explanation that if eligibility is not timely reinstated, the rental unit will be reclaimed including the date the locks will be changed.

**ORDER**

1. The nonrenewal of the rental agreement and eviction are upheld.
2. Ms. Torres must vacate the premises located at N5848 Sand Hill Court, De Pere, WI 54115 **on or before 12 noon on October 7, 2022**, when the locks will be changed.
3. If Ms. Torres is unable to remove all personal property from the premises before **11:59 a.m. on October 7, 2022**, Ms. Torres shall have until **11:59 a.m. on October 28, 2022**, to remove any remaining personal property. Ms. Torres 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 October 7, 2022.

  
Patricia Ninham Hoeft, Trial Court Judge

