

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Paul C. Smith,
Petitioner;

v.

Case No: 23-TC-004
Date: May 12, 2023

Oneida Comprehensive Housing Division,
Respondent.

FINAL ORDER

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

Appearing in Person: Petitioner, Paul C. Smith, and Petitioner's stepdaughter, Sierra Feay;
Respondent, Scott Denny, Area Manager, Rental Programs, Oneida Comprehensive Housing
Division; and Respondent's Attorney, Krystal John.

BACKGROUND

On May 5, 2023, Petitioner filed a complaint to contest the basis of the termination of his rental agreement and eviction. Petitioner is seeking an extension of his eviction date from May 8, 2023 to May 30, 2023. On May 10, 2023, a pre-trial hearing was held where the parties had an opportunity to try to resolve their dispute, but they were not successful. As a result, a contested hearing was held on May 12, 2023. At the contested hearing, Petitioner informed the Court that he vacated the apartment in compliance with the notice of eviction.

ISSUE

Is Petitioner's complaint contesting the basis of his eviction withdrawn and the case dismissed because Petitioner complied with the 5 Day Notice of Eviction and Termination by vacating his apartment at W1127 Park Drive, #401, Oneida, WI 54155?

ANALYSIS

Petitioner challenged a “5 Day Notice of Eviction and Termination” issued to him on May 3, 2023 by the Oneida Comprehensive Housing Division (OCHD). Because Petitioner timely filed his complaint with the Trial Court, the eviction was stayed until a hearing could be held where the OCHD is required to prove by a preponderance of the evidence the existence of an allegation that an applicable law or rule was violated or a nuisance was committed in Petitioner’s apartment or caused by Petitioner. On May 12, 2023, a contested hearing was held. At the start of the hearing, Petitioner stood up to motion the Court that, in order to settle this matter, he vacated the premises and does not intend to return. Because Petitioner’s action to vacate the premises complies with OCHD’s eviction notice and Respondent did not object, the Court finds Petitioner’s appeal to be withdrawn and the stay on the eviction is lifted. As a result, Respondent reported that OCHD will carry out the eviction by changing the locks this day on May 12, 2023. Thus, this case is dismissed.

Additionally, as stated in the “5 Day Notice of Eviction and Termination,” Petitioner is provided 15 business days or until Friday, June 2, 2023, between the hours of 8:00 a.m. and 2:30 p.m. each business day, to collect any personal belongings remaining in the apartment. Petitioner is responsible for contacting the Oneida Comprehensive Housing Division to schedule times to access the premises for the removal of personal property.

Finally, Petitioner appeared without legal representation at both the pre-trial hearing and contested hearing. At the May 10, 2023 pre-trial hearing, Petitioner reported he was attempting to obtain legal representation from the GTC Legal Resource Center and motioned the Court for 10 days to obtain legal counsel. The Court denied the motion based on Respondent’s report about public safety concerns based on allegations that Petitioner or his visitors were using illegal substances in his apartment. Additionally, the Court considered that prior to the hearing on the 5 Day Notice of Eviction and Termination, Petitioner had time to obtain legal representation starting April 11, 2023 when he was issued a 30 Day Notice of Eviction and Termination by OCHD requiring Petitioner to vacate his apartment on or before May 12, 2023. Petitioner’s efforts to obtain legal representation started on May 3, 2023 when he received his second eviction notice, despite his knowledge that he had an opportunity to obtain legal representation starting on April 11, 2023 when he was issued his first eviction notice. On May 11, 2023, the

Court received a letter from the GTC Legal Resource Center's Supervising Attorney stating that Petitioner is not represented by the Center because the Center had not yet reviewed Petitioner's case through the Center's intake process. As a result, Petitioner appeared at the contested hearing without legal representation.

FINDING OF FACTS

1. The Court has jurisdiction pursuant to the Oneida Code of Laws (O.C.L), Chapter 610, Eviction and Termination.
2. Notice was provided to all those entitled to notice.
3. On April 11, 2023, the OCHD issued Petitioner a "30 Day Notice of Eviction and Termination" requiring Petitioner to vacate his apartment on or before May 12, 2023.
4. On May 5, 2023, Petitioner timely filed a complaint with the Trial Court to appeal the "5 day eviction and termination" decision and the eviction was stayed pending a hearing.
 - a. In the appeal, Petitioner was seeking an extension of the eviction date from May 8, 2023 to May 30, 2023.
5. On May 10, 2023, a pre-trial hearing was held on Petitioner's appeal of a "5 Day Notice of Eviction and Termination" issued by the Oneida Comprehensive Housing Division (OCHD).
 - a. On May 3, 2023, the OCHD issued Petitioner a "5 Day Notice of Eviction and Termination" requiring Petitioner to vacate his apartment on or before May 8, 2023.
6. On May 12, 2023, a contested hearing was held. At the hearing, Petitioner said he appeared to tell the Court he vacated his apartment and will not return, in order to settle this matter. Also, Petitioner said he is in no position to hear accusations against him because he does not have legal representation.
 - a. Respondent did not object to dismissing the case and will carry out the eviction by changing the locks on this day, May 12, 2023.

PRINCIPLES OF LAW

Oneida Code of Laws Title 8. Judiciary – Chapter 803, Oneida Judiciary Rules of Civil Procedure

803.21. Dismissal of Action

803.21-1. *Voluntary Dismissal.*

(b) By Court Order; Effect. Except as required in Rule 803.21-1(a)(1), an action may be dismissed at the plaintiff's request only by Court order, on terms that the Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (b) is without prejudice.

Oneida Code of Laws 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:

(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.

ORDER

1. Petitioner's appeal is withdrawn, and the eviction is upheld.
2. The Petitioner must vacate the premises located at W1127 Park Drive, #401, Oneida, WI 54155 before May 12, 2023, when the locks will be changed.
3. If Petitioner is unable to remove all personal property from the premises before June 2, 2023, 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 was signed on May 12, 2023.



Patricia Ninham Hoeft, Trial Court Judge