

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Vanessa P. Rose,
Wayne M. Teller,
Petitioners**

v.

**CASE NO: 24-TC-001
DATE: February 12, 2024**

**Oneida Comprehensive Housing,
Respondent**

FINAL ORDER

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

Appearing in Person: Petitioners, Vanessa P. Rose and Wayne M. Teller. Respondent, Oneida Comprehensive Housing (CHD), represented by Attorney Krystal John.

STATEMENT OF THE CASE

Petitioners filed seeking to overturn their eviction and renew their annual rental agreement.

ISSUE

Are Petitioners entitled to notice requirements under early contract termination when Respondent, in its discretion, declined to renew the rental agreement after it expired, based on the non-renewal being in the best interest of the Nation?

PRINCIPLES OF LAW

Title 6. Property and Land – Chapter 611 Rule #1 General Rental Program Eligibility, Selection and Other Requirements.

1.8-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month term. Tenants wishing to remain in the property are required to sign a renewal rental agreement annually. 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. 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.

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: (a) Violates the terms of the contract; (b) Is alleged to have violated any applicable law or rule; and/or (c) Is alleged to have committed one or more nuisance activities.

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.

(a) Eviction for Failure to Pay Rents.

(1) If an occupant fails to pay any installment of rent when due, the occupant's contract is terminated if the owner gives the occupant notice requiring the tenant to pay rent or vacate on or before a date at least thirty (30) calendar days after the giving of the notice and if the occupant fails to pay accordingly.

(2) If an occupant has been given notice under 610.5-3(a)(1) and has paid the rent on or before the specified date, or been permitted by the owner to remain in possession contrary to such notice, and thereafter fails to pay a subsequent installment of rent on time within one (1) year of said notice, the occupant's contract is terminated if the owner, while the occupant is in default in payment of rent, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

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.

610.6-2. *Effect of Failure to Vacate.* A failure to vacate following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract does not in any circumstances, regardless of acceptance of rent payments, create a periodic tenancy. For the purposes of this section, a periodic tenancy means when an occupant uses/occupies a premises without an effective and valid contract by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

ANALYSIS

During the hearing, Respondent verbally motioned for a dismissal claiming Petitioners failed to state a claim upon which relief can be granted. The Court heard from both parties regarding Respondent's motion. Respondent argued Petitioners are contesting their eviction based upon claims made under the Eviction and Termination Law Section 610.5, Early Contract Termination, however, Petitioners were evicted due to their rental agreement not being renewed in accordance with Chapter 611 Rule #1, section 1.8-5. Respondent also argued CHD secured and took possession of the premises in accordance with the Limited Term Rental Agreement and section 610.6-1 of the Eviction and Termination Law. For the reasons stated below, the Court agrees with Respondent and grants the motion.

Petitioner's filing requested an emergency hearing to be allowed to re-occupy the premises until the Court hears the matter due to Respondent not providing proper notice under section 610.5-3(a). Section 610.5-3(a) governs evictions for early contract terminations due to a failure to pay rent. Here, Petitioners' rental agreement was not an early contract termination for failure to pay rent. Petitioners' rental agreement was not renewed based on it not being in the best interest of the Nation, in accordance with Chapter 611 Rule #1 section 1.8-5. As a result, the notice requirements under section 610.5-3(a) do not apply to Petitioners and Petitioners' request for an emergency hearing and to be allowed to re-occupy the premises based on improper notice must be denied. Therefore, Respondent's motion must be granted.

Petitioners also claim they were not provided a notice to vacate when the locks were changed on December 18, 2023, in violation of section 610.5-3(a). However, as stated above, the required

notices under section 610.5-3(a) do not apply to Petitioners. As a result, Petitioners' request for an emergency hearing and to be allowed to re-occupy the premises based on improper notice must be denied. Therefore, Respondent's motion must be granted.

Next, Petitioners claim Respondent's correspondence was inconsistent, misleading and confusing because instead of assessing a late fee of \$30.00 each month for rent that is not current on or before the 22nd of the month, Respondents physically changed the locks with the police department and forced the tenants out of the home. The Court disagrees. The locks were changed in accordance with the Eviction and Termination Law, section 610.6-1, which states, "if an occupant fails to vacate the premises following notice of termination based on 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." Here, Petitioners' rental agreement expired on October 1, 2023. On October 12, 2023, Respondent sent Petitioners a notice regarding "Ineligibility for a Rental Agreement Renewal – 30 Day Notice to Reinstate Eligibility/Vacate." This notice stated Petitioners were no longer eligible because the Annual Renewal Packet was incomplete, the household had an outstanding debt owed to a utility provider in excess of \$200.00, and the household had a past due balance of rent in the amount of \$5,028.00. The notice gave Petitioners thirty (30) calendar days from the date of the notice or until November 13, 2023, to reinstate eligibility for the Income Based Rental Program. Otherwise, the locks would be changed on November 14, 2023. On November 13, 2023, Petitioners had not had their eligibility reinstated. The locks, however, were not changed on November 14, 2023. Instead, Respondent chose to work with Petitioners by giving them more time to reinstate eligibility by entering into a 30-Day Limited Term Rental Agreement on November 15, 2023. The Limited Term Rental Agreement expired on December 15, 2023, and Petitioners had not vacated the premises. Therefore, CHD secured and took possession of the premises after the timeframe in the notice expired. Furthermore, section 5 of the agreement states, "At the termination or expiration of this Agreement, Tenant will peaceably and without legal process deliver up the possession of the premises in good condition and return all keys to the premises." The agreement also stated, "You were deemed ineligible for a rental agreement renewal-based Rule #2 section 2.4-4 due to the outstanding balance you currently owe to CHD rent balance of \$5,522 and currently owe utility provider in excess of \$200 (Oneida Utility \$279.02 and WPS \$2,682.35)." According to Chapter 611, Landlord-Tenant, Rule #2 section 2.4-4, applications for a rental agreement may not have a

past due balance greater than two hundred dollars (\$200) owed to any utility provider and not have any prior debt owed to the Comprehensive Housing Division. Based upon this rule and the amounts owed to utility providers and CHD, Petitioners were deemed ineligible at the expiration of their rental agreement and again at the expiration of the Limited Term Rental Agreement because although Petitioners were working with other entities for financial help, they still had a past due balance greater than \$200 owed to a utility provider and had a prior debt owed to CHD. As a result, after the Limited Term Rental Agreement expired on December 15, 2023, Respondent secured and took possession of the premises by changing the locks on December 18, 2023, in accordance with the Limited Term Rental Agreement. For these reasons, the Court finds, Petitioners did not support their claim that Respondent's correspondences were inconsistent, misleading, and confusing. As a result, Petitioners' request for an emergency hearing and to be allowed to re-occupy the premises based on improper notice must be denied. Therefore, Respondent's motion must be granted.

Finally, Petitioners claim the eviction expired because CHD did not change the locks on November 14, 2023, as indicated on the October 12, 2023, notice titled "RE: Ineligibility for a Rental Agreement Renewal – 30 Day Notice to Reinstate Eligibility/Vacate." Petitioners, however, provided no legal authority that an eviction expires if the locks are not changed by the date provided in a notice. Respondent argued section 610.6-2. *Effect of Failure to Vacate*, should apply, which states, "a failure to vacate following notice of termination based on expiration and non-renewal of a contract does not in any circumstances, regardless of acceptance of rent payments, create a periodic tenancy." The Court agrees with Respondents. Even though Petitioners failed to vacate and occupied the premises for a short period, without a rental agreement, it did not somehow void or cause the eviction to expire or create a periodic tenancy. As a result, Petitioners' request for an emergency hearing and to be allowed to re-occupy the premises based on improper notice must be denied. Therefore, Respondent's motion must be granted.

FINDINGS

1. The Court has subject matter and personal jurisdiction over this matter.
2. Notice was provided to all those entitled to notice.
3. Petitioners were evicted on December 18, 2023.

4. On January 8, 2024, Petitioners filed a complaint contesting their eviction.
5. A hearing was held on February 9, 2024.
6. Petitioner's rental agreement expired on October 1, 2023.
7. Petitioner's rental agreement was not renewed based upon the best interest of the Nation for the following reasons, as of October 12, 2023:
 - a. Petitioners currently owe to CHD rent balance of \$5,028.00.
 - b. Petitioners owe Oneida Utility \$245.66.
 - c. Petitioners owe WPS \$3,055.75.
8. Petitioners were sent notice on October 12, 2023, of their ineligibility for a rental agreement renewal and were given 30 days to pay the above past due balances in order to become eligible.
9. Petitioners failed to pay the past due balances by November 13, 2023.
10. Petitioners and Respondent entered into a 30-Day Limited Term Rental Agreement on November 15, 2023, to give Petitioners more time to reinstate eligibility.
11. The 30-Day Limited Term Rental Agreement expired on December 15, 2023, and Petitioners still had not satisfied the requirements to become eligible.
12. Respondent properly secured and claimed the premises by changing the locks on December 18, 2023.


ORDER

The Court enters the following order:

1. Respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted is **GRANTED**.
2. This case is dismissed, with prejudice.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council this order was signed on February 12, 2024.



Layatalati Hill, Chief Trial Court Judge