

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Kathleen Mauritz and Chad Mauritz,
Petitioners;

v.

CASE: 24-TC-002
DATE: February 16, 2024

Oneida Comprehensive Housing Division (CHD),
Respondent.

FINAL ORDER

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

Appearing telephonically: Petitioners, Kathleen Mauritz and Chad Mauritz; Respondent’s attorney, Krystal John, on behalf of the Oneida Comprehensive Housing Division.

BACKGROUND

On January 31, 2024, Petitioners filed a complaint to contest a notice of eviction and non-renewal of their rental agreement issued by the Oneida Comprehensive Housing Division (CHD). The complaint identifies Kathleen Mauritz who signed the rental agreement as the tenant, and her son, Chad Mauritz who lives with her, as Petitioners. On January 23, 2024, the CHD served Kathleen Mauritz with a “Notice of Eviction – Non-Renewal of Your Rental Agreement” requiring Petitioners to vacate the premises upon expiration of their rental agreement on January 31, 2024, because the locks on the rental unit will be changed on February 1, 2024. Because Petitioners filed a complaint with the Trial Court before their rental agreement and the eviction notice period expired, the eviction was automatically stayed pending a determination by the Trial Court. On February 7, 2024, a pre-trial eviction hearing was scheduled; the hearing was postponed to February 16, 2024 and the Court required the parties to appear by telephone. On February 9, 2024, Respondent filed a motion requesting the hearing be rescheduled to an earlier date before February 15, 2024, the date when CHD intends to change the locks if the non-renewal decision is upheld. On February 12, 2024, the Court granted Respondent’s motion and rescheduled the pre-trial eviction hearing to February 14, 2024. At the

hearing, Respondent's attorney verbally motioned the Court to dismiss Petitioners' complaint for failure to state a claim upon which relief can be granted.

ISSUE

Are Petitioners entitled to continue residing in the rental apartment when the Oneida Comprehensive Housing Division (CHD) declined to renew the 12-month rental agreement before it expired on January 31, 2024?

FINDING OF FACTS

1. The Court has jurisdiction pursuant to Chapter 610, Eviction and Termination and Chapter 611, Landlord-Tenant, of the Oneida Code of Laws.
2. Notice was provided to all those entitled to notice.
3. Petitioners are Kathleen Mauritz and her son, Chad Mauritz. They reside at W852 EE Road, Apt. 601, De Pere, WI 54115.
4. On February 1, 2023, Kathleen Mauritz signed a 12-month Income Based Rental Program rental agreement with CHD. If the agreement was not renewed, it would expire January 31, 2024.
5. On January 23, 2024, eight (8) calendar days before Kathleen Mauritz's rental agreement expired, the CHD personally served Petitioners with a "Notice of Eviction – Non-Renewal of Your Rental Agreement" requiring Petitioners to vacate the premises on January 31, 2024 because the locks on the rental unit will be changed on February 1, 2024. Other information in the notice included the following:
 - a. Brief history of CHD efforts to treat ongoing unsanitary conditions since November 2022 and a bed bug infestation in Petitioners' rental unit.
 - b. CHD's conclusion, after a January 19, 2024 meeting with an exterminator and Petitioners, that Petitioners were unreceptive to fully complying with the required precautions to ensure Petitioners' rental unit was free of bed bugs following CHD's heat treatment of Petitioners' unit.
 - c. CHD's requirement that Petitioners cannot move into or store their personal belongings in the CHD unit currently rented and occupied by Kathleen Mauritz's daughter.
 - d. Notice that CHD would provide Petitioners with a 14-day limited term rental agreement if Kathleen Mauritz met with an Aging and Disability Services caseworker

to receive a functional screening and provide time for Ms. Mauritz to transfer into an assisted living facility if she obtains a referral.

- e. Notice that Petitioners may file a complaint with the Trial Court to contest the eviction and obtain an automatic stay on the eviction until the hearing proceedings are concluded, if the complaint was filed before the eviction notice period expired, which was on or before January 31, 2024.
6. On January 30, 2024, CHD served Petitioners with a letter stating that the CHD was prepared to offer Petitioners a 14-Day Limited Term Rental Agreement after confirming an appointment on February 5, 2024, for Kathleen Mauritz to meet with a representative of the Aging and Disability Center (ARDC) who will perform a functional screening. Other information in the notice included the following:
 - a. A copy of a 14-Day Limited Term Rental Agreement for the period of February 1 to 14, 2024 was attached to the letter.
 - b. Notice that Petitioners must sign the agreement to be valid.
 - c. Notice that Petitioners may file a complaint with the Trial Court to contest the eviction and obtain an automatic stay on the eviction until the hearing proceedings are concluded, if the complaint was filed before the eviction notice period expired, which was on or before January 31, 2024.
 7. On January 31, 2024, Petitioners filed a complaint with the Trial Court to contest the eviction and obtain an automatic stay on the eviction until a hearing is concluded. Petitioners' complaint included the following pleadings:
 - a. Petitioners alleged that their eviction was improper; as relief, they want to continue living in the apartment.
 - b. In addition to the complaint, Petitioners attached the following two (2) documents:
 - i. A copy of the CHD January 23, 2024 'Notice of Eviction – Nonrenewal of Your Rental Agreement,' and
 - ii. A copy of the CHD January 30, 2024 letter offering to provide Petitioners with a 14-day limited term rental agreement.
 1. A copy of the limited term agreement was not included in Petitioners' pleadings.
 8. On February 7, 2024, a pre-trial eviction hearing was scheduled. The hearing was postponed to February 16, 2024 and the Court required the parties to appear by telephone.

9. On February 9, 2024, Respondent filed a motion requesting the hearing be rescheduled to an earlier date before February 15, 2024, the date when the locks will be changed as stated in the 14-day limited term agreement that was signed by Petitioners on January 30, 2024.
 - a. On February 12, 2024, the Court granted Respondent's motion and rescheduled the pre-trial eviction hearing to February 14, 2024.
10. On February 14, 2024, a pre-trial eviction hearing was held.
 - a. Petitioners appeared pro se.
 - b. Respondent's attorney declined peacemaking.
 - c. Respondent's attorney verbally motioned the Court to dismiss Petitioner's complaint for failure to state a claim upon which relief can be granted.
11. Kathleen Mauritz is a 61-year-old tribal member and unemployed. She has diabetes, MS, one of her legs is amputated, and she recently had some toes amputated.
12. Chad Mauritz moved in with his mother in November 2022 and continues to live with her.
13. Kathleen Mauritz and Chad Mauritz do not own vehicles.
14. Chad Mauritz contended that he and his mother never refused the exterminator from entering their unit to perform treatments and tried to comply with the pre-treatment and post-treatment requirements. Also, Chad Mauritz contended that he was cleaning the apartment and doing the laundry but admitted he had some days when he didn't feel well and was unable to perform house cleaning.
15. Respondent's attorney argued that the Petitioners require more services than the landlord services provided by the CHD.
16. Respondent's attorney argued the Nation's law governing Landlord-Tenant, O.C.L. Chapter 611, Rule #2, 2.8.5(a) does not specify a certain number of days to give notice to a tenant when the CHD declines to not renew the tenant's rental agreement, so long as the decision is provided before expiration of the rental agreement.
17. Respondent's attorney argued notice requirements for evictions provided in the Nation's law governing Evictions and Termination, Chapter 610, section 610.5-3 do not apply to CHD decisions to not renew a rental agreement.
18. Kathleen Mauritz argued it is "impossible" for her to vacate the premises after the eviction hearing ended.
 - a. Ms. Mauritz requested that she be provided five (5) additional days to continue residing in the unit to find other housing and remove her personal belongings.

- b. Ms. Mauritz said she has no other place to go and was told by CHD that she is prohibited from staying with her daughter who rents a unit from CHD.
19. Respondent's attorney said a bed bug eradication heat treatment of the entire Redstone Complex was scheduled to begin on February 16, 2024, but will be postponed until Petitioners vacate the premises.
20. The Court extended the stay of the eviction to provide Petitioners five (5) additional calendar days to vacate the premises and remove personal belongings from the unit. Petitioners are required to vacate the premises on or before February 19, 2024, at 11:59 p.m.
21. If Petitioners are unable to remove all of their personal belongings from the unit before 11:59 p.m. on February 19, 2024, Respondent's attorney agreed to provide Petitioner's with fifteen (15) business days to remove remaining personal property.

PRINCIPLES OF LAW

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

803.9-2. How to Present Defenses.

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:

(6) Failure to state a claim upon which relief can be granted.

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

2.8. 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.

Title 6. Property and Land – Chapter 610, Eviction and Termination

610.1. Purpose and Policy

610.1-1. *Purpose.* The purpose of this law is to provide consistent procedures relating to the Nation's rental and leasing programs for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved.

610.1-2. *Policy.* It is the Nation's policy to provide fair termination and eviction processes that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

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.

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.

Title 8. Judiciary – Chapter 805, Rules of Appellate Procedure

805.5. Initiating the Appeal

805.5-1. *Right of Appeal.* Any party to a civil action, who is aggrieved by a final judgment or order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

(a) In any case brought on appeal, the Appellant may petition the Court for an order staying the judgment or order. A stay shall be granted in all cases in which it is requested unless plain and obvious injustice would result from granting the stay. The Court may render a stay conditioned upon execution of a bond to guarantee performance of the judgment or order when deemed necessary.

(b) In the event the appeal or request for stay is denied, the Court shall state the reasons for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

ANALYSIS

On January 31, 2024, the day when her rental agreement was set to expire, Kathleen Mauritz and her son, Chad Mauritz, filed a complaint with the Trial Court to contest the decision by the Oneida Comprehensive Housing Division (CHD) to decline renewal of their rental agreement. The CHD served Kathleen Mauritz with their nonrenewal decision and notice of eviction on January 23, 2024, eight (8) calendar days before the rental agreement expired. The notice of eviction stated the locks would be changed on February 1, 2024. When a tenant files a complaint with the Trial Court to contest a CHD decision to not renew their rental agreement, their eviction may be automatically stayed until court proceedings conclude. This case is about the decision by CHD to decline renewal of a 12-month rental agreement entered into between Kathleen Mauritz and CHD under the Income Based Rental Program and signed by Ms. Mauritz on February 1, 2023. The focus of this complaint is whether the CHD properly declined to renew Petitioner's rental agreement by determining the renewal was not in the best interest of the Nation and provided Petitioners with proper notice of the decision and eviction.

The nonrenewal of this rental agreement is governed under Oneida Code of Laws (O.C.L.) Chapter 611, Rule #2, 2.8-5(a) that states, "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." The notice of eviction is governed under O.C.L. Chapter 610, Evictions and Termination, section 610.6-1, that states: "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."

At the pre-trial eviction hearing on February 14, 2024, Respondent's attorney verbally motioned for a dismissal claiming that Petitioners failed to state a claim upon which relief can be granted. Respondent's motion to dismiss under O.C. 803.9-2(a)(6) of the Oneida Rules of Civil Procedure seeks to dismiss the complaint because Petitioners failed to allege facts that plausibly show they are entitled to relief. A motion to dismiss for failure to state a claim "tests the legal sufficiency of the complaint."¹ Facts and evidence presented to the Court outside of the pleadings are excluded.² Here, the Court relies only on the complaint filed by Petitioner which

¹ See, *Andruss v. Divine Savior Healthcare Inc.*, 973 NW 2d 435, 439 (Wis. 2022).

² *Id.*

included the CHD notice of nonrenewal and eviction dated January 23, 2024, and the CHD letter, dated January 30, 2024, to offer Petitioners a limited term rental agreement.

First, to determine whether the CHD complied with the proper notice procedures when it served Petitioners with the notice of nonrenewal and eviction, the Court considers O.C.L. Chapter 611, Rule #2, 2.8-5 and specifically 2.8-5(a). This law governs rental agreement renewals. Here, Respondent's attorney argued that the law does not specify a certain number of days to give notice to a tenant when the CHD declines to not renew the tenant's rental agreement. Respondent's attorney argued that notice of a nonrenewal decision is proper so long as the decision is provided before expiration of the rental agreement. Additionally, Respondent's attorney argued that notice requirements provided in the Nation's law governing evictions and terminations, O.C.L. Chapter 610, 610.5-3, apply to CHD decisions for the early termination of a rental agreement. Here, the CHD decided to not renew Kathleen Mauritz's rental agreement and required her to vacate the premises on January 31, 2024 when her rental agreement expired. CHD served Ms. Mauritz with a notice of their nonrenewal decision on January 23, 2024, eight (8) calendar days before her agreement expired. Petitioners did not dispute that they were not provided notice at the hearing or in their complaint. In fact, Petitioners filed a copy of the January 23, 2024 notice with their complaint. Because Kathleen Mauritz provided no facts to show that CHD did not provide her with notice of their nonrenewal decision and eviction and the law does not require a specific number of days when CHD must give a tenant notice of eviction, the Court finds that CHD properly provided Ms. Mauritz with notice.

Second, Petitioners claim that the eviction was wrong, but they provided no facts showing that the CHD decision to not renew the rental agreement was unlawful. Under O.C.L. Chapter 611, Rule #2, 2.8-5(a), the CHD is provided with discretionary authority to decline renewal of a rental agreement after determining that renewal is not in the best interest of the Nation. Here, in the January 23, 2024 notice of eviction, the CHD wrote that it held a meeting with Petitioners and an exterminator on January 19, 2024 to prepare for an upcoming heat treatment to exterminate bed bugs in the Redstone Apartment Complex and during that meeting, the CHD concluded that Petitioners "were nonreceptive to fully complying with the required precautions to ensure your persons and your rental unit remain bed bug free after CHD's heat treatment of your unit." Also, the CHC included in the January 23, 2024 notice a brief description of its ongoing efforts, starting in November 2022, to work with Petitioners to respond to concerns about the sanitary condition of their apartment and ability to comply with the pre-

treatment and post-treatment requirements to help CHD exterminate bed bugs throughout the apartment complex. In response, Petitioners provided no facts in their complaint to dispute CHD's conclusions stated in the January 23, 2024 or allege any wrongdoing. At the hearing, Chad Mauritz contended that he and his mother never refused the exterminator from entering their unit to perform treatments and tried to comply with the pre-treatment and post-treatment requirements. He also argued that after he and his mother returned to their apartment after a bed bug treatment that his mother would become sick. Mr. Mauritz argued that he was cleaning the apartment and doing the laundry but admitted he had some days when he didn't feel well and was unable to perform house cleaning. He also said that he and his mother were receiving help from other agencies to help them keep their apartment clean.

While this may be true, it does not show that the CHD failed to properly exercise its discretion in determining that renewal of the rental agreement was not in the best interest of the Nation. While the law under O.C.L. Chapter 611 governing Landlord-Tenant duties and responsibilities does not provide a definition for "in the best interest of the Nation," the Court was guided by the policy provided in O.C.L. 611, Rule #2 – Income Based Rental Program Eligibility, Selection and Other Requirements, section 2.1-1 that states, "The purpose of this rule is to provide additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's income-based programs." When questioning whether CHD's decision was in the best interest of the Nation, the policy's mission statements sets out factors, such as operating "affordable housing in safe, sanitary and healthy environments within the reservation." At the hearing, Respondent's attorney asserted that the CHD exhausted their efforts to assist the Petitioners who require more services than landlord services that the CHD is able to provide. Additionally, Respondent's attorney stated that efforts to encourage Petitioners to accept referrals for assistance from the ARDC and other supportive services were unsuccessful. In this complaint, Petitioners allege that their eviction was wrong, but provided no facts in their complaint or at the hearing to show how the CHD determination was not in the best interest of the Nation. Because Petitioner's complaint fails to allege any facts to support their allegation that the eviction was wrong, the Court grants Respondent's motion to dismiss. Thus, the CHD decision to not renew Kathleen Mauritz's rental agreement is upheld.

Finally, the Court considers whether to extend the stay on the eviction to allow Petitioners additional time to remove their personal belongings and vacate the unit. On January 31, 2024 when Petitioners filed their complaint with the Trial Court to contest their eviction, the

Court did not know whether Petitioners and the CHD actually entered into a 14-day limited term. On February 9, 2024, Respondent's attorney included a signed copy of the limited term rental agreement with a written motion requesting the pre-trial eviction hearing to be rescheduled before February 15, 2024 when the CHD intended to change the locks. Under the signed 14-day limited term rental agreement, the Petitioners were required to vacate the premises when the agreement expired on February 14, 2024 and on February 15, 2024, CHD would change the locks.

During the hearing, Respondent's attorney argued that after the hearing concludes, Petitioners must vacate the unit by 11:59 p.m. on February 14, 2024. Respondent's attorney argued that CHD cannot provide additional time for the Petitioners to remain in the unit due to public health concerns. Kathleen Mauritz argued that because it was nearly 12:00 noon and the hearing had not yet concluded that it would be "impossible" for her to pack up her personal belongings in the apartment and vacate before midnight. When examining whether to extend the stay of the eviction, the Court weighs the impact to the Petitioners and the other residents in the apartment complex. In this case, Kathleen Mauritz is a 61-year-old tribal member who has diabetes and MS, uses a catheter, and uses a wheelchair because she has one leg amputated. She is not employed and neither she nor her son possess a vehicle. While Respondent's attorney noted for the record that while it may appear that Petitioners are being provided less than 12 hours to remove their personal belongings and vacate the unit, that in fact, Petitioners were on notice to vacate the premises since January 23, 2024. While that may be true, the Court concludes that it is not reasonable to grant Respondent's attorney's request to enforce the 14-day limited term agreement by requiring Petitioners to vacate the premises within the next 12 hours. The Court gives more weight to Petitioner's reasons for seeking additional time than Respondent's arguments for not allowing the stay. The Court acknowledges that rescheduling the treatment is difficult, but most likely not as difficult as what Ms. Mauritz will experience if she becomes homeless. Additionally, the Court also recognizes that the CHD chooses to postpone the treatment scheduled on February 16, 2024 rather than work with Petitioners to ensure they are able and capable to perform the pre-treatment and post-treatment measures. Thus, the Court extends the stay on the eviction to give Petitioners five (5) calendar days to remove their personal belongings and vacate the unit on or before 11:59 p.m. on February 19, 2024; CHD will change the locks on February 20, 2024. If Petitioners are unable to remove all personal property from the premises before 11:59 p.m. February 19, 2024, Petitioners shall have 15 business days

to remove remaining personal property.


ORDER

The Court enters the following order:

1. The CHD decision to decline renewal of Kathleen Mauritz's rental agreement is **UPHELD**.
2. Petitioners must vacate the premises located at W852 EE Road, Apt. 601, De Pere, WI 54115, on or before **11:59 p.m. on February 19, 2024**.
3. If Petitioners are unable to remove all personal property from the premises before 11:59 p.m. February 19, 2024, Petitioners shall have 15 business days, from February 20, 2024 through March 11, 2024, to remove remaining personal property.
 - a. Petitioner is responsible for calling the Oneida Comprehensive Housing Division to schedule times to access the premises for the removal of personal property.
4. Respondent's motion to dismiss for failure to state a claim upon which relief can be granted is **GRANTED**.
5. 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 16, 2024.


Patricia Ninham Hoeft, Trial Court Judge