

Title 6. Property and Land - Chapter 610
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they shoo them away – they vanished them – issues

EVICITION AND TERMINATION

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610.1. Purpose and Policy

610.1-1. *Purpose.* The purpose of this law is to provide consistent procedures for terminating a contract and/or evicting an occupant which affords the occupant 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.

610.2. Adoption, Amendment, Repeal

610.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-A and amended by resolution BC-07-08-26-J.

610.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

610.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

610.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

610.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

610.3. Definitions

610.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

(b) "Comprehensive Housing Division" means the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential leasing programs.

(c) "Contract" means either a lease document pursuant to the Leasing law or a rental agreement pursuant to the Landlord-Tenant law.

(d) "Eviction" means to expel an occupant from the premises.

- (e) “Law enforcement agency” means a governmental unit whose purpose is to prevent and detect crime and enforce laws. For the Nation, law enforcement agencies include the Oneida Police Department and the Zoning Administration.
- (e) “Nation” means the Oneida Nation.
- (f) “Nuisance” means an occupant’s interference with another occupant’s use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations, execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.
- (g) “Occupant” means:
- (a) a person or entity who has acquired a legal right to use or occupy Tribal land by a lease under the Leasing law, or one who has the right to use or occupy a property under a lease.
 - (b) a person granted the right to use or occupy a premises pursuant to a rental agreement in accordance with the Landlord-Tenant law.
- (h) “Owner” means:
- (1) the Nation when the Nation is acting in its capacity as a lessor as defined in the Leasing law or lessee; or
 - (2) the Nation or any person or entity within the Nation’s jurisdiction acting in its capacity as a landlord as defined in the Landlord Tenant law.
- (i) “Periodic tenancy” means when an occupant uses or 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.
- (j) “Premises” means the property covered by a contract, including not only the real property and fixtures, but also any personal property furnished by the owner pursuant to a contract.
- (k) “Rent” means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the premises for the period of time set by the contract.
- (l) “Rental value” means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property maintenance and repairs.
- (m) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.
- (n) “Security deposit” means a payment made to the owner by the occupant to ensure that payments will be made and other responsibilities of the contract performed.
- (o) “Stay of eviction” means the eviction process is temporarily halted.
- (p) “Waste” means physical damage or deterioration caused to the premises, whether intentional or negligent.

610.4. Administrative Rulemaking Authority

610.4-1. *Residential Contracts.* The Comprehensive Housing Division may create rules to further govern the processes contained in this law related to the Nation’s residential contracts.

610.4-2. *Agricultural and Business Contracts.* The Division of Land Management may create rules to further govern the processes contained in this law related to the Nation's agricultural and business contracts.

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) Violates any applicable law or rule; and/or
- (c) Commits an applicable nuisance activity.

610.5-2. *Domestic Abuse Defense to Eviction.* An occupant has a valid defense to eviction if they provide that if not for the claimed domestic abuse, which is noticed to the owner with any of the following documentation, there would not be cause for eviction under section 610.5-1:

- (a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation protecting the occupant from a co-occupant;
- (b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the occupant from a co-occupant;
- (c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation protecting the occupant or child of the occupant from a co-occupant, based on the co-occupant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-occupant not to contact the occupant;
- (e) A criminal complaint alleging that the co-occupant sexually assaulted the occupant or a child of the occupant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-occupant stalked the occupant or a child of the occupant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-occupant as a result of the co-occupant being arrested for committing a domestic abuse offense against the occupant under Wis. Stat. 968.075.

610.5-3. *Contrary Provision in the Contract.* Except for leases entered into pursuant to the Leasing law, any termination provisions in a contract that are contrary to those provided in this law are invalid.

610.6. General Notice Requirements for Early Contract Termination

610.6-1. *Notice.* This section governs 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.

610.6-2. *Notice Content Requirements.* Notices for the early termination of a contract and eviction required to be provided under this law shall include the following information:

- (a) The violation of law or rule, committing of nuisance, or breach of the contract, with citations to the applicable law, rule, or contract clause;
- (b) If the notice is pursuant to a failure to pay rents, the current delinquent balance due;
- (c) If the notice is pursuant to waste or a breach of contract, other than the failure to pay rent:

- (1) A statement that the occupant has a thirty (30) day period to cure;
 - (2) The date the period to cure expires and the termination becomes effective in the event occupant does not cure; and
 - (3) Potential consequences for failure to cure, which may include, but are not limited to eviction and the assessment of damages against the occupant.
 - (d) Statement that the occupant may request a hearing with the Oneida Trial Court prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Trial Court; and
 - (e) The contact information for the owner or staff available to answer questions and/or hear concerns of the occupant related to the notice.
- 610.6-3. *Notice to Individuals.* When providing notice to an occupant that is an individual, the owner shall use both of the following methods:
- (a) By affixing a copy of the notice on an entrance to the rented or leased premises where it can be conveniently read; and
 - (b) By mailing a copy of the notice by registered or certified mail to the occupant at the occupant's last-known address.
- 610.6-4. *Notice to Corporations or Partnerships.* If notice is to be given to a corporation or partnership, notice shall be given the methods provided for in section 610.6-3.
- 610.6-5. *Notice to One (1) of Several Parties.* If there are two (2) or more co-occupants of the same premises, notice given to one (1) is deemed to be given to the others also.
- 610.6-6. *Effect of Actual Receipt of Notice.* If notice is not properly given in accordance with this law, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the owner alleging actual receipt to prove the fact by clear and convincing evidence.

610.7. Eviction for Failure to Pay Rents

- 610.7-1. The owner may terminate an occupant's contract if an occupant fails to pay any installment of rent when due.
- 610.7-2. *Notice of Termination.* In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant 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 the unpaid rents accordingly.
- 610.7-3. *Right to Cure.* An occupant shall have a right to cure the failure to pay rents after receiving a notice of termination. An occupant is deemed to be complying with the notice if promptly upon receipt of such notice the occupant remedies the default by paying the unpaid rent on or before the specified date in the notice.
- 610.7-4. *Subsequent Violations.* If within one (1) year from the giving of any notice for the failure to pay rents, the occupant again fails to pay a subsequent installment of rent on time, 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. The owner shall not be required to provide an opportunity to cure for a subsequent violation of unpaid rents.

610.8. Eviction for Waste or Contract Breach other than Rent Payment

- 610.8-1. The owner may terminate an occupant's contract if the occupant commits waste or breaches any covenant or condition of the occupant's contract, other than for payment of rent.

610.8-2. *Notice of Termination.* In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant to remedy the default or vacate the premises on or before a date at least thirty (30) calendar days after the giving of the notice, and the occupant fails to remedy the default.

610.8-3. *Right to Cure.* An occupant shall have a right to cure the waste or breach of contract after receiving a notice of termination. An occupant is deemed to be complying with the notice if promptly upon receipt of such notice the occupant and the owner enter into a written agreement to cure that outlines the reasonable steps for the occupant to take and timelines necessary to remedy the default, and the occupant then complies with the agreement, or if damages are adequate protection for the owner and the occupant makes a bona fide and reasonable offer to pay the owner all damages for the occupant's breach.

610.8-4. *Subsequent Violations.* If within one (1) year from the giving of any notice for waste or breaching any covenant or condition of the occupant's contract, the occupant again commits waste or breaches the same or any other covenant or condition of the occupant's contract, other than for payment of rent, the occupant's contract is terminated if the owner, prior to the occupant's remedying the waste or breach, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice. The owner shall not be required to provide an opportunity to cure for a subsequent violation of waste or a breach of contract.

610.9. Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant

610.9-1. The owner may terminate an occupant's contract based on a violation of an applicable law or rule, or if the occupant commits a nuisance act. In order for the owner to terminate an occupant's contract based on this section, the violation of law or rule, or the nuisance act shall be an activity which:

- (a) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other tenants;
- (b) threatens the health or safety of, or right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- (c) threatens the health or safety of the owner or an agent or employee of the owner; or
- (d) engages in any drug-related criminal activity on or near the premises.

610.9-2. *Notice of Violation.* In order to terminate based on this section, it is required that the owner received notice from a 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 another individual in the occupant's unit, or
- (b) a nuisance that exists in that occupant's unit or was caused by that occupant on the owner's premises.

610.9-3. *Notice of Termination.* In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant to vacate on or before a date at least five (5) calendar days after the giving of the notice.

610.9-4. *No Right to Cure.* The owner shall not be required to provide an occupant an opportunity to cure for a violation of an applicable law or rule or nuisance act.

610.10. Contesting the Contract Termination

610.10-1. *Contesting the Termination.* The occupant may contest a contract termination by filing a complaint challenging the basis of the eviction with the Oneida Trial Court prior to the termination date provided in the notice.

(a) If the occupant contests the termination, the eviction is stayed and the contract may not be terminated without proof to the Oneida Trial Court by the owner by the greater preponderance of the credible evidence that the termination of the contract was valid under this law.

(b) Despite an owner's satisfaction of the proof requirements, the Oneida Trial Court may, at its discretion, stay an eviction by honoring any alternative agreement regarding pending actions entered into by the occupant and a court of competent jurisdiction pending successful completion of the alternative agreement.

610.11. Failure to Vacate Following Notice of Eviction or Contract Expiration

610.11-1. *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.

610.11-2. *Damages for Failure to Vacate.* If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination, or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required.

(a) In absence of proof of greater damages, the owner shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. Nothing in this section prevents the owner from seeking and recovering any other damages to which the owner may be entitled.

610.11-3. *Commencement of Eviction Action.* 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 may file an eviction action with the Oneida Trial Court to remove the occupant from possession or occupancy of the premises.

(a) *Proper Notice for Eviction Action.* The owner's proof of notice terminating tenancy under this law through certified mail from the United States post office shall be sufficient to establish that proper notice has been provided for the purpose of filing a complaint or otherwise demonstrating that proper notice has been given in an eviction action, and an affidavit of service may not be requested to establish that proper notice has been provided.

(b) *Acceptance of Rent or Other Payment.* If an owner commences an action under this section against an occupant whose occupancy has been terminated for failure to pay rent or for any other reason, the action under this section may not be dismissed because the owner accepts past due rent or any other payment from the occupant after serving notice of default or after commencing the action.

(c) *No Waiver.* It shall not be a defense to an action of eviction or a claim for damages that the owner or occupant has previously waived any violation or breach of any of the terms of the contract including, but not limited to, the acceptance of rent or that a custom or practice occurred or developed between the parties in connection with the contract so as to waive or lessen the right of the owner or occupant to insist upon strict performance of the terms of the contract.

(d) *Joinder of Other Claims.* The owner may join with the claim for restitution of the premises any other claim against the occupant arising out of the occupant's possession or occupancy of the premises.

(e) *Complaint.* The complaint shall be in writing and identify the parties and the premises which is the subject of the action and state the facts which authorize the removal of the occupant. The description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described. A description by street name and number is sufficient. If the complaint relates only to a portion of described real estate, that portion shall be identified. If a claim in addition to the claim for restitution is joined, the claim shall be separately stated. The request for relief in the complaint shall be for the removal of the occupant or the property or both and, if an additional claim is joined, for the other relief sought by the owner.

(f) *Occupant's Pleading.* The occupant may plead to the complaint orally or in writing, except that if the owner's title is put in issue by the occupant, the answer shall be in writing and subscribed in the same manner as the complaint.

(g) *Order for Judgment.* In an eviction action, if the Oneida Trial Court finds that the termination and eviction occurred in accordance with this law and the owner is entitled to possession, the Oneida Trial Court shall immediately enter an order for judgment to the owner for the removal of the occupant and their property from the premises.

(h) *Writ of Removal.* At the time of ordering judgment for the removal of the occupant and their property from the premises, the Oneida Trial Court shall immediately order that a writ of removal be issued, and the writ shall be delivered to both the Oneida Police Department and owner for execution. No writ shall be executed if received by the Oneida Police Department and owner more than thirty (30) days after its issuance.

(i) *Appeal.* An appeal in an eviction action shall be initiated with the Oneida Court of Appeals within fifteen (15) days of the entry of judgment or order.

(1) No appeal by an occupant for an order for judgment for restitution of the premises may stay proceedings on the judgment unless the appellant serves and files with the notice of appeal an undertaking to the owner, in an amount and with surety approved by the judge who ordered the entry of judgment.

(2) The undertaking shall provide that the appellant will pay all costs and disbursements of the appeal which may be taxed against the appellant, obey the order of the Oneida Court of Appeals upon the appeal and pay all rent and other damages accruing to the owner during the pendency of the appeal.

(3) Upon service and filing of this undertaking, all further proceedings in enforcement of the judgment appealed from are stayed pending the determination of the appeal.

(4) Upon service by the appellant of a copy of the notice and appeal and approved undertaking upon the Oneida Police Department holding an issued but unexecuted writ of restitution or of execution, the Oneida Police Department shall promptly cease all further proceedings pending the determination of the appeal.

(5) If the occupant fails to pay rent when due, or otherwise defaults in the terms of the undertaking, the payment guaranteed by the undertaking with surety shall be payable immediately to the owner and shall not be held in escrow by the court.

(6) Upon the failure of the occupant to pay rent when due, or upon other default by the occupant in the terms of the undertaking, the stay of proceedings shall be

dismissed and the Oneida Police Department shall immediately execute the writ of restitution.

610.11-4. *Execution of Writ of Removal.* Upon delivery of a writ of removal to the Oneida Police Department and the owner, an Oneida Police Department officer and the owner shall execute the writ of removal within ten (10) days of the receipt of the writ.

(a) In executing the writ of removal the Oneida Police Department officer shall:

(1) Remove from the premises described in the writ the occupant and all other persons found upon the premises, using such reasonable force as is necessary.

(2) Remain on scene while the owner changes the locks on the premises and secures possession of the premises.

(b) In executing the writ of removal the owner shall change the locks on the premises and secure possession of the premises.

610.11-5. *Disposal of Personal Property.* In the event the occupant has left personal property in the premises, the occupant may retrieve the said personal property by contacting the owner or staff listed on the notice of termination. The owner shall hold personal property for a minimum of five (5) business days.

(a) The owner shall keep a written log of the date and the work time the owner or owner's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the premises after the expiration of the timeframe provided in the notice of termination.

(b) The Comprehensive Housing Division shall create rules further governing the disposition of personal property in relation to the Nation's residential contracts and the Division of Land Management shall create rules further governing the disposition of personal property in relation to the Nation's business and agricultural contracts.

(c) The owner may recover from the occupant damages suffered by the owner for the storing or removing of personal property, and the removing or disposing of debris left at the premises after the expiration of the timeframe provided in the notice of termination.

610.12. Withholding From and Return of Security Deposits

610.12-1. *Applicability.* This section applies only to contracts that require a security deposit.

610.12-2. *Standard Withholding Provisions.* When the owner returns a security deposit to an occupant after the occupant vacates the premises, the owner may withhold from the full amount of the security deposit only amounts reasonably necessary to pay for any of the following:

(a) Occupant damage, waste, or neglect of the premises;

(b) Unpaid rent for which the occupant is legally responsible;

(c) Payment that the occupant owes under the contract for utility service provided by the owner but not included in the rent;

(d) Payment that the occupant owes for direct utility service provided by a government-owned utility, to the extent that the owner becomes liable for the occupant's nonpayment.

(e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit of government, to the extent that the owner becomes liable for the occupant's nonpayment; and

(f) Any other payment for a reason provided in a nonstandard provision document described in 610.11-3.

610.12-3. *Nonstandard Withholding Provisions.* A contract may include one or more nonstandard withholding provisions that authorize the owner to withhold amounts from the occupant's security deposit for reasons not specified in 610.11-2(a) through (f).

(a) The owner shall provide any such nonstandard withholding provisions to the occupant in a separate written document entitled "Nonstandard Withholding Provisions."

(b) The owner shall specifically identify each nonstandard withholding provision with the occupant before the occupant enters into a contract with the owner.

(c) If the occupant signs their name, or writes their initials, by a nonstandard withholding provision, it is rebuttably presumed that the owner has specifically identified the nonstandard withholding provision with the occupant and that the occupant has agreed to it.

610.12-4. *Normal Wear and Tear.* This section does not authorize the owner to withhold any amount from a security deposit for normal wear and tear, or for other damages or losses for which the occupant cannot reasonably be held responsible under the terms of the contract, and applicable laws and/or rules of the Nation.

610.12-5. *Timing for Return of the Security Deposit.* The owner shall deliver or mail to an occupant the full amount of any security deposit paid by the occupant, less any amounts that may be withheld, within sixty (60) calendar days after any of the following:

(a) If the occupant vacates the premises on the original termination date of the contract, the date on which the contract terminates.

(b) If the occupant vacates the premises or is evicted before the original termination date of the contract, the date on which the occupant's rental agreement terminates or, if the owner re-rents the premises before the occupant's rental agreement terminates, the date on which the new occupant takes occupancy/use of the premises.

(c) If the occupant vacates the premises untimely or is removed from the premises pursuant to an eviction action judgment and writ of restitution, the date on which the owner learns that the occupant has vacated the premises or has been removed from the premises.

610.13. Eviction and Termination Actions

610.13-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law.

610.13-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

End.

Adopted – BC-10-12-16-A
Amended – BC-07-08-26-J