Title 6. Property and Land – Chapter 611

LANDLORD-TENANT

Rule # 2 – Income Based Rental Program Eligibility, Selection and Other Requirements

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2.1. Purpose and Delegation

2.1-1. *Purpose.* 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 rental programs. The mission of the income-based housing program is to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

2.1-2. *Authority.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law. However that delegation excluded the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

2.2. Adoption, Amendment and Repeal

2.2-1. This rule was adopted by the Comprehensive Housing Division in accordance with the procedures of the Administrative Rulemaking law.

2.2-2. This rule may be amended or repealed by the approval of the Comprehensive Housing Division pursuant to the procedures set out in the Administrative Rulemaking law.

2.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control.

2.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

2.3. Definitions

2.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.[1]
(b) "Household" means all persons residing within the income-based rental unit.
(c) "HUD" means the United States Department of Housing and Urban Development.
(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.
(c) "Nation" means the Oneida Nation.
(d) "Premises" means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.
(e) "Rental Agreement" means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.
(f) "Tenant" means the person granted the right to use or occupy a premises pursuant to a rental agreement.
(g) "Tribal member" means an enrolled member of the Nation.
(h) "Security Deposit" means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

2.4. Eligibility Requirements

2.4-1. *Tribal Member Status.* At least one (1) of the household members listed in the household composition is required to be a Tribal member. Comprehensive Housing Division staff shall verify enrollment status by either requiring a copy of the Tribal Identification Card or requesting verification from the Trust Enrollment Department.
2.4-2. *Maximum Income.* Pursuant to the Native American Housing Assistance and Self Determination Act (NAHASDA), in order to be eligible for an income-based rental agreement, the household must qualify as low income at the time of initial occupancy. In order to qualify as low-income, applicants' household income may not exceed eighty percent (80%) of the regional gross annual income based on the data from Outagamie County.[2] For the purposes of this section, CHD shall calculate income in accordance with 24 CFR § 5.609 and shall provide the effective language to the Legislative Reference Office to be published as Appendix 01 to this Rule so that applicable income calculations are publicly available on the Oneida Register.
2.4-3. *Minimum Income.* Applicants shall have current income that demonstrates the applicant will gross, at a minimum, $7,800 in the coming year. Comprehensive Housing Division staff shall include General Welfare Assistance payments made by the Nation for the purpose of calculating minimum income, but may not consider income attributable to the General Welfare Assistance payments when setting rents.
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

[1] *See* BC Resolution 10-12-16-D providing that for purposes of the Landlord-Tenant law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.
[2] Pursuant to resolution BC-01-25-12-A, Outagamie County is designated as the data source for collecting regional gross income for determining low-income housing eligibility because the income in that area is generally higher than Brown County's and results in more persons being eligible based on the income requirements.

debt owed to the Comprehensive Housing Division.

32.4-5. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination within two (2) years from the date of the application are not eligible to participate in the income-based rental program.

2.4-6. *Criminal Convictions.* Applicants with any of the following types of convictions are not eligible for participation in the income-based rental program, provided that the Pardon and Forgiveness law may provide an exception to the conditions contained in this section:

(a) A drug conviction within three (3) years from the date of application;

(b) A felony conviction within five (5) years from the date of application; 4and/or

(c) A criminal conviction based upon an act of violence within two (2) years from the date of the application.

2.4-7. *Pardon and Forgiveness.* A grant of a pardon or forgiveness pursuant to the Nation's Pardon and Forgiveness law may result in an otherwise ineligible tenant becoming eligible.

2.5. Application Process and Wait List

2.5-1. *Applying.* Persons wishing to participate in the income-based housing program shall complete the Comprehensive Housing Division rental agreement application and any other accompanying forms required based on the income-based program eligibility requirements. The Comprehensive Housing Division staff may not consider any applications for selection and/or placement on the wait list until the application and all accompanying forms are complete. Upon receipt of a completed application, including all supplementary forms, Comprehensive Housing Division staff shall date and time stamp the application. If, regardless of a complete application submittal, additional information is required to determine eligibility, the Comprehensive Housing Division staff shall request such information and maintain the application submittal date provided that the applicant responds to the information requests in a reasonably timely fashion.

(a) *Household Composition Form.* The Comprehensive Housing Division staff shall require applicants to the income-based housing program to complete a Household Composition Form which provides the full name, age and date of birth of each person contemplated to reside in the income-based rental unit. In order to verify such information, the Comprehensive Housing Division staff shall require that applicants submit the following with the Household Composition Form:

(1) Copies of social security cards for each person contemplated to reside in the income-based rental unit, provided that for newly born babies that have not yet been issued a social security card a birth certificate is sufficient;

(2) A copy of a picture identification card for each adult contemplated to reside in the income-based rental unit;

(3) If any adults in the home are enrolled in post-secondary education, verification of enrollment in the form of a financial aid award letter or other documentation directly from the school; and

(4) If an adult in the household is the custodial parent/guardian of a minor, a copy of the court documents which awarded such placement.

(b) *Background Checks.* In order to ensure compliance with the eligibility requirements of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall

perform a background check on each adult in the household. Household adults are also subject to annual background checks upon annual rental agreement renewal pursuant to 2.8-5 and as may be determined to be necessary to maintain the safety of the community by the Comprehensive Housing Division staff.

2.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing Division staff completes its review of an application and determines the applicant(s) eligible for the income-based rental program, the staff shall:

(a) Place the applicant(s) into one (1) of the following categories of renters based on the household size and needs as provided below:

(1) Single Adult/Adult Couple – A maximum of two (2) adults in the household, no children.

(2) Small Household – A maximum four (4) household members in the household.

(3) Large Household – A household of five (5) or more household members.

(4) Elder – A household with a maximum of two (2) adults and no children wherein at least one (1) adult is sixty-two (62) years old or older at the time of application.

(5) Minimum Handicap Accessibility Required – For each of the category types provided in subsections (1)-(4) above, there shall be an additional category for each requiring minimum handicap accessibility. This category shall be reserved for households with at least one (1) household member requiring permanent and minimal handicap accessibility (i.e. permanent use of a walker); this category includes all handicap needs that do not amount to full wheelchair accessibility.

(6) Maximum Handicap Accessibility Required – For each of the category types provided in subsections (1)-(4) above, there shall be an additional category for each in which as least one (1) household member requires full wheelchair handicap accessibility.

(b) Determine whether there is a wait list for the type of rental unit required based on the applicant's category of renter.

(1) If there is a wait list established, place the applicant on the wait list based on the date and time stamp of the application. At such time, Comprehensive Housing Division staff shall provide the applicant with notice of their placement on the wait list and the requirement to update their application should anything change prior to their designated use of rental unit becoming available. An applicant may request to be removed from the wait list at any time.

(2) If there is not a wait list established and there are available rental units available for the applicant's renter category, move to the tenant selection process provided in sections 2.6-3 and 2.6-4.

2.5-3. *Notification of Ineligibility.* If review of a complete submitted application and/or annual renewal reveals that an applicant is ineligible to participate in the income-based rental program based on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall notify the applicant of the cause of the ineligibility and how the applicant may become eligible in the future. At such time, Comprehensive Housing Division staff shall also inform the applicant of other housing opportunities offered by the Nation for which the applicant may be eligible, if applicable.

2.5-4. *Required Application Updates.* Applicants on the wait list are required to update the application, at a minimum, annually, but also whenever information submitted on the application has changed. Applicants that fail to complete the application update within the allotted timeframe

will be removed from the wait list and required to re-apply for future consideration absent proof of extenuating circumstances, for which Comprehensive Housing Division staff may provide a grace period of a maximum of ten (10) calendar days. For any updated application that reveals an applicant has become ineligible, Comprehensive Housing Division staff shall remove the applicant from the wait list and provide the applicant notice of the cause for ineligibility.

2.6. Tenant Selection

2.6-1. *Household Size and Available Units.* When a rental premise becomes available, the Comprehensive Housing Division staff shall preliminarily select a tenant based on the first applicant on the wait list for the said unit type based on the corresponding renter and unit categorization. In the event that a handicap accessible unit becomes available and there are no applicants on the wait list for the said type of handicap accessible unit, an applicant from the same renter category that does not require handicap accessibility may be selected for the said unit.

2.6-2. *Notice of Tenant Selection.* When an applicant is selected for a rental unit in accordance with this section, the Comprehensive Housing Division staff shall provide the applicant with notice of tenant selection. The notice, at a minimum, shall include the address of the rental premise, the required security deposit and monthly rent, and a requirement that the applicant respond within fifteen (15) calendar days to accept/reject the rental premise noting that the security deposit is due at the time of acceptance. Applicants that pay a security deposit and fail to complete the selection process to actually take occupancy forfeit the security deposit to the Comprehensive Housing Division as consideration for holding the unit. Comprehensive Housing Division shall return the security deposit to the applicant only in circumstances where the applicant is prevented from entering the rental agreement based on a loss of eligibility due to circumstances outside of the applicant's control (i.e. death of a Tribal member that made the household eligible for the income-based rental program).

(a) *Failure to Respond or Rejecting a Rental Premise.* If a rental premise is rejected for any reason or the applicant fails to respond to the notice, Comprehensive Housing Division staff shall remove the applicant from the wait list; in such circumstances the applicant may re-apply for the income-based rental program following a ninety (90) calendar day period of ineligibility.

(b) *Accepting a Rental Premise.* In order for an applicant's acceptance of a rental premise to be complete, the applicant shall submit along with the acceptance a payment for the full security deposit. Prior to accepting a security deposit payment, Comprehensive Housing Department staff shall verify that the applicant remains eligible for the income-based rental program and the rental unit type based on the household's categorization.

(1) *Standard Timeframe for Completing the Rental Agreement and Taking Occupancy.* Except as provided in subsection (2) below, applicants that have accepted a rental premise from the income-based rental program have five (5) calendar days from the date of acceptance and payment of the security deposit to:

(A) Reconfirm that they remain eligible for the income-based rental program and remain in the same category of renters;

(B) Pay the first month's rent; and

(C) Execute the rental agreement and all required supplemental forms, provided that the agreement may not be executed until (A) and (B) are complete.

(2) *Extended Timeframe for Completing the Rental Agreement for Applicants*

Providing Termination Notice to Another Landlord or Housing Program. The Comprehensive Housing Division offers an extended timeframe for applicants required to provide thirty (30) or more calendar or business days' notice of termination of a rental agreement to a current landlord or housing program. In such circumstances, in order to qualify for the extended timeframe, the applicant shall provide proof of the notice requirement in his/her current rental agreement by submitting the signed rental agreement to the Comprehensive Housing Division. Upon submittal of such proof, the applicant shall have thirty (30) calendar days from the date of acceptance and payment of the security deposit to:

(A) Reconfirm that they remain eligible for the income-based rental program and remain in the same category of renters;

(B) Pay the first month's rent; and

(C) Execute the rental agreement and all required supplemental forms, provided that the agreement may not be executed until (A) and (B) are complete.

(3) *Taking Occupancy.* The Comprehensive Housing Division shall provide the tenant with keys to the rental premises upon execution of the rental agreement. As such time, the Comprehensive Housing Division staff shall provide the tenant with a check-in sheet and notice the tenant that he/she has seven (7) calendar days from the date the tenant takes occupancy to complete the check-in sheet and submit it to the Comprehensive Housing Division.

(d) Buildings with Common Corridors and/or Shared Ventilation. All buildings with common corridors and/or shared ventilation systems shall be non-smoking throughout, including tenant units, and shall be posted as such by the Comprehensive Housing Division. Tenants shall be informed at the time of move-in, and within their rental agreement, as to whether their rental unit is within a non-smoking building.

2.7. Rental Unit Catalog, Setting Rents and Security Deposits

2.7-1. *Rental Unit Catalog*. The Comprehensive Housing Division shall maintain a catalog of all rental units included in the income-based rental program. Said catalog shall categorize each rental unit based on designated use for the type of renter in accordance with the types of renters established in section 2.5-2(a).

2.7-2. *Setting Rents.* The Comprehensive Housing Division shall determine the required monthly rent for each household based on the household's income in accordance with the following:

(a) Rent may not exceed thirty percent (30%) of the household's adjusted gross income based on the income calculation requirements provided in section 2.4-3. Adjusted gross income means the annual household income remaining after the Comprehensive Housing Division staff applies the deductions approved pursuant to 24 CFR § 5.609 and shall provide the effective language to the Legislative Reference Office to be published as Appendix 02 to this Rule so that applicable rent deductions are publicly available on the Oneida Register.[3]

(b) Monthly rent may not exceed the fair market rents of the rental premise as determined by the data for Outagamie County.

[3] Comprehensive Housing Division staff may not consider income attributable to the General Welfare Assistance payments when setting rents.

(c) Households with any member that qualifies as a party listed below shall receive preferential rent wherein the Comprehensive Housing Division may not charge rent that exceeds twenty percent (20%) of the household's adjusted gross income based on the income calculation requirements provided in section 2.4-3.

(1) Elder Tribal Member – A Tribal member that is sixty-two (62) years old or older.

(2) Handicapped Tribal Member – A Tribal member that has a physical disability as documented by a medical provider/or proof of disability payments.

(3) Legally Incompetent Adult Tribal Member – A Tribal member that has been determined to be a legally incompetent adult based on the findings of a court of competent jurisdiction.

(4) Mentally Disabled Minor Tribal Member – A Tribal member under the age of eighteen (18) years old that has a mental disability as documented by a medical provider.

2.7-3. *Standard Security Deposit.* Comprehensive Housing Division staff shall set the standard security deposit required for each rental premise in the income-based rental program at $350.00.

2.7-4. *Increased Security Deposit for Pets.* Tenants in the Comprehensive Housing Division's general rental program may have pets[5] in accordance with the Domestic Animal Ordinance, provided that an increased security deposit is required.

(a) The standard security deposit does not apply to tenants with pets. Comprehensive Housing Division staff shall set the increased security deposit required for households with pets at a rate of $350.00 plus an additional $200.00 per pet.

(b) In the event that a tenant wishes to acquire a pet after the rental agreement has been signed, the tenant shall notify the Comprehensive Housing Division and shall pay the difference between the increased security deposit for pets and the standard security deposit. Tenants that fail to report a pet in the household may be assessed charges for an increased security deposit for pets if such pets are reported to the Comprehensive Housing Division and/or discovered at the time of an inspection.

2.8. Annual Inspection and Rental Agreement Renewal

2.8-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule tenants' annual inspections for a date that is within ninety (90) calendar days of the expiration of the tenants' rental agreement.

2.8-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual inspection shall use the checklist that is approved by the Comprehensive Housing Division director. Upon completion of the inspection, Comprehensive Housing Division staff shall request that the tenant(s) sign the completed checklist.

2.8-3. *Damages.* Tenants are required to pay costs to repair any damages to the rental premises discovered during the annual inspection that do not amount to normal wear and tear. Payment for such costs must be received by the Comprehensive Housing Division prior to signing a rental agreement renewal, provided that the Comprehensive Housing Division may offer the tenant a payment agreement in for the damages, in which case the repayment agreement shall be signed prior to the rental agreement renewal.

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.

(a) *Change in Household Composition.* If a change in the household composition changes the tenant's category of renter based on section 2.5-2(a), the Comprehensive Housing Division staff shall work to transfer the household to a rental unit of corresponding category as soon as possible. If no such units are currently available, Comprehensive Housing Division staff shall move the tenant to the top of the waiting list. In order to be transferred or placed on a wait list, the tenant shall demonstrate that they remain eligible for the income-based rental program and are current with rent and utility payments. Tenants are only eligible for rental unit transfers within their current category of renter if, in the Comprehensive Housing Division's discretion, the transfer is needed to better accommodate the household composition.

(b) *Change in Household Income*. A change in household income may cause a change in the amount of monthly rent required, accordingly, any change in household income that is not reported within thirty (30) calendar days of the change shall result in a retroactive adjustment of the rent if the change results in an increase of rent payments. Retroactive rent shall be applied for each month there was a change in income that was not reported, excluding the initial thirty (30) calendar days provided to the tenant to report the change. The tenant is responsible for payment of all current and retroactive adjustments of rent and may be eligible for a repayment agreement, provided that in all circumstances and retroactive rental arrears shall be paid in full within one (1) year.

(c) *Rental Agreement Amendment.* Should a change in household size and/or income cause a change in the terms of the tenant's rental agreement, an amendment to the rental agreement is required to be executed.

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.

(b) *Ineligibility Due to an Update of Household Information.* In circumstances where the tenant learns of ineligibility as part of an update of household information, Comprehensive Housing Division staff shall include in the notice of ineligibility the warning of potential termination in accordance with the rental agreement. In the event the tenant is unable to or fails to reinstate their eligibility in accordance with the timeline provided in the notice, the Comprehensive Housing Division shall permit the tenant to remain in the unit for the longer of the duration of the rental agreement or ninety (90) calendar days from the date of the notice of ineligibility.

(1) If the tenants' circumstances result in the tenant completing the term of the rental agreement, eligibility shall be reconsidered at the time of the annual renewal. If the tenant remains ineligible at the time of renewal, article 2.8-6(a) applies.

(2) If the tenants' circumstances result in the tenant receiving a thirty (30) calendar day notice to cure or ninety (90) calendar day notice to vacate, the tenant shall enter a limited term rental agreement to cover any time which exceeds the current rental agreement.

(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.

2.9. Rental Agreement Cancellation

2.9-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the general rental program are requested to provide the Comprehensive Housing Division with a minimum of two (2) weeks of notice.

2.9-2. *Prorated Rent*. In the event of cancellation of a rental agreement or abandonment of the rental premises, the Comprehensive Housing Division staff shall prorate the required last month's rent payment based upon the greater of the following:

(a) The number of calendar days the unit was occupied in the last month; or

(b) Two (2) weeks from the date of cancellation or the date the Comprehensive Housing Division learns of abandonment.

End.

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