

Title 6. Property and Land - Chapter 610
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 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.

610.2. Adoption, Amendment, Repeal

610.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-A.

610.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.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) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to contracts governed by this law as defined by Oneida Business Committee Resolution.¹

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

(c) “Eviction” means to expel an occupant from the premises.

(d) “Nation” means the Oneida Nation.

¹ See BC Resolution 09-27-17-H providing that the 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 sales and mortgages programs.

(e) “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 (as defined in the rules which the Land Commission and the Comprehensive Housing Division shall jointly establish), execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

(f) “Occupant” means the person granted the right to use or occupy a premises pursuant to a lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant law respectively.

(g) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or as a landlord as defined in the Landlord Tenant law.

(h) “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.

(i) “Rent” means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the property for the period of time set by the contract.

(j) “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.

(k) “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.

(l) “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 Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts.

610.4-2. *Agricultural and Business Contracts.* The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to 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) Is alleged to have violated any applicable law or rule; and/or
- (c) Is alleged to have committed one or more nuisance activities.

610.5-2. *Domestic Abuse Defense to Eviction.* An occupant has a valid defense to eviction if he or she alleges that if not for the alleged 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 tenant from a co-tenant;

- (b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant'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-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

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.

(b) *Eviction for Waste or Contract Breach other than Rent Payment.*

(1) If an occupant commits waste or breaches any covenant or condition of the occupant's contract, other than for payment of rent, the occupant's tenancy is terminated if the owner gives the occupant a 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 if the occupant fails to comply with such notice. An occupant is deemed to be complying with the notice if promptly upon receipt of such notice the occupant takes reasonable steps to remedy the default and proceeds with reasonable diligence, 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.

(2) If within one (1) year from the giving of any notice under 610.5-3(b)(1), 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.

(c) *Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.* The owner may terminate an occupant's contract based on an alleged violation of an applicable law or rule or if the occupant commits a nuisance act.

(1) In order to terminate based on this section, the owner must have received notice, which may be from, but is not limited to, another occupant, law enforcement agency or a local government's office of the district attorney, which reports:

(A) a violation of an applicable law or rule on behalf of the occupant or in the occupant's unit, or

(B) a nuisance that exists in that occupant's unit or was caused by that occupant on the owner's property. 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.

(2) The occupant may contest a termination based on a violation of applicable law or rule or nuisance by filing a complaint challenging the basis of the eviction with the Oneida Judiciary.

(3) If the occupant contests the termination prior to the termination date provided in the notice, the eviction is stayed and the contract may not be terminated without proof to the Oneida Judiciary by the owner by the greater preponderance of the credible evidence of the allegation that a violation of law and/or rule and/or nuisance exists in that occupant's unit or was caused by that occupant.

(4) Despite an owner's satisfaction of the proof requirements in section 610.5(c)(3), the Oneida Judiciary 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.

(d) *Content, Form and Manner of Giving Notice.*

(1) *Notice Content.* Notices required to be provided under this law shall include the following:

(A) The violation of law and/or rule, committing of nuisance and/or breach of the contract, with citations to the applicable law, rule and/or contract clause;

(B) If the notice is pursuant to section 610.5-3(a), the current delinquent balance due;

(C) If the notice is pursuant to section 610.5-3(a) or (b):

(i) A statement that the occupant has a thirty (30) day period to cure;

(ii) The date the period to cure expires and the termination becomes effective in the event occupant does not cure; and

(iii) Potential consequences for failure to cure, which may include, but are not limited to eviction and the assessment of damages against the occupant.

(D) If notice is pursuant to section 610.5-3(c), a statement that the occupant may request a hearing with the Oneida Judiciary 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 Judiciary;

(E) The contact information for the Comprehensive Housing Division staff available to answer questions and/or hear concerns of the occupant related to the notice.

(2) *Notice to Individuals.* When providing notice to an occupant that is an individual, the owner shall use one of the following methods:

(A) Giving a copy of the notice personally to the occupant or by leaving a copy at the occupant's usual place of abode in the presence of some competent member of the occupant's family at least fourteen (14) years of age, who is informed of the contents of the notice, provided that the owner may request that the notice be personally served to the occupant by the Oneida Police Department;

(B) Leaving a copy with any competent person apparently in charge of the premises or occupying the premises or a part thereof, and by mailing a copy by first class mail to the occupant's last-known address;

(C) If notice cannot be given under subsection (A) or (B) with reasonable diligence, by affixing a copy of the notice on an entrance to the rented premises where it can be conveniently read and by mailing a copy by first class mail to the occupant's last-known address;

(D) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;

(E) By serving the occupant as prescribed in the Rules of Civil Procedure for the service of a summons.

(3) *Notice to Corporations or Partnerships.* If notice is to be given to a corporation notice may be given by any method provided in subsection (1) except that notice under subsection (1)(A) may be given only to an officer, director, registered agent or managing agent, or left with an employee in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in subsection (1) except that notice under subsection (1)(A) may be given only to a general partner or managing agent of the partnership, or left with an employee in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least fourteen (14) years of age, who is informed of the contents of the notice.

(4) *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.

(5) *Effect of Actual Receipt of Notice.* If notice is not properly given by one (1) of the methods specified in this section, 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.

(e) *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. 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.

(a) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida Police Officer be on the scene while the locks are being changed.

(b) In the event the occupant has left personal property in the home, the occupant may retrieve the said personal property by contacting the Comprehensive Housing Division staff listed on the notice of termination. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days, where a business day is Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

(1) The Comprehensive Housing Division shall keep a written log of the date and the work time the Comprehensive Housing Division'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.

(2) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

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.

610.6-3. *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. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, 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. Nothing in this section prevents the owner from seeking and recovering any other damages to which the owner may be entitled.

610.7. Withholding From and Return of Security Deposits

610.7-1. *Applicability.* This section applies only to contracts that require a security deposit.

610.7-2. *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 tenant owes under the contract for utility service provided by the owner but not included in the rent;
- (d) Payment that the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant'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 610.7-3.

610.7-3. *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 610.7-2(a) through (f). The owner shall provide any such nonstandard withholding provisions to the occupant in a separate written document entitled "Nonstandard Withholding Provisions." The owner shall specifically identify each nonstandard withholding provision with the occupant before the occupant enters into a contract with the owner. If the occupant signs his or her name, or writes his or her 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.

610.7-4. *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.

610.7-5. *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 under subsections 610.7-2 and 610.7-3, within thirty (30) 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 610.6-1, the date on which the owner learns that the occupant has vacated the premises or has been removed from the premises under section 610.6-1.

610.8. Eviction and Termination Actions

610.8-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law.

610.8-2. 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.

610.8-3. The owner is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

End.

Adopted – BC-10-12-16-A