

CHAPTER 46-2. LANDLORD TENANT CODE

Section 1.1. Landlord and Tenant proceedings.

It is hereby declared that the civil jurisdiction of the Tribal Court as defined in Chapter 2, Section 20 of the Law and Order Code, as amended, includes jurisdiction over all landlord and tenant proceedings. This Title shall apply to all persons and property subject to the governing authority of the Tribe as established by the Tribal Constitution and Bylaws. This Ordinance shall apply to residential housing dwelling units and apartments located within the Pine Ridge Indian Reservation, regardless of ownership of the housing unit. Jurisdiction under this Chapter is extended over all persons or entities within the jurisdiction of the Tribe who rent, lease or allow persons to occupy housing dwellings or accommodations for the purpose of human dwelling, occupation or residence, and all persons who rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Oglala Sioux Tribe, whether they are Indian or non-Indian, and whether or not they have a place of business within the Pine Ridge Indian Reservation. It shall not apply to hotel or motel rooms. It shall not include agricultural leases or properties not primarily used for residential occupancy, which shall be subject to the provisions of Chapter 2, Section 21.1 of the Oglala Sioux Tribe Law and Order Code. Foreclosure of Leasehold Mortgages shall be subject to the provisions of Chapter 46 of the Oglala Sioux Tribe Law and Order Code.

Section 1.2. Forcible detainer and eviction.

An action of forcible detainer, or eviction, to recover the possession of real property is maintainable in the Tribal Court when:

- (a) A lessee, or tenant, in person or by subtenant, holds over after the termination of the lease or expiration of the term, or fails to pay rent for three (3) days from the date due;
- (b) A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same;
- (c) A party, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession;
- (d) A party unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise;
- (e) A party continues in possession after a sale of the real property, including any sale or execution under a mortgage, execution, order or judicial process after the expiration of time fixed for redemption and after execution and the delivery of a deed;
- (f) A party continues in possession after a judgment in partition or after a sale under a Tribal Court Order or Decree;
- (g) A tenant or lessee wastes or causes damage to real property or fails to perform any act or performs any act which violates the terms and conditions of the lease, resulting in a termination of the lease.

Section 1.3. Notice to Quit: When required – when, on whom, and how served.

In all cases arising under subsections (a), (d), (e), or (g) of Section 1.2, three (3) days written notice to quit or remove must be given to the lessee, tenant, subtenant, or party in possession, before proceedings can be instituted for forcible detainer or eviction. Notice shall be in writing and must be served and returned by a person at least eighteen (18) years of age, by

delivering the notice to the tenant or person in possession, or to some person of suitable age residing on the premises, or, if neither can be found with reasonable diligence, the notice may be served by affixing it on a conspicuous part of the premises where it may be read conveniently. The person making service shall make a return of service, which need not be verified, and which shall be filed in the case if suit is instituted.

Section 1.4 Pre-Eviction Options

- (a) Negotiated Settlement. After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in informal discussions to settle the issues between the parties and avoid an eviction proceeding. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive their rights.
- (b) Stay of Proceedings. When the parties mutually agree in good faith to proceed with discussions, and formal eviction proceedings have been initiated, upon notice, the court shall stay such proceedings until notified that a hearing is required or that a settlement has been reached.
- (c) Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options, at their own expense:
 - 1. The parties may employ the use of advocates or attorneys; or
 - 2. The parties may employ the use of a mediator or peacemaker.

Section 1.5 Proceedings in Tribal Court.

- (a) Verified Complaint. Proceedings may be instituted in Tribal Court under this Chapter by filing a Complaint setting forth the facts supporting the demand for relief. The Complaint must be in writing and verified by the plaintiff, or his attorney. The Complaint must include at a minimum:
1. A description of the rental agreement.
 2. The address of the dwelling unit or a description of its location.
 3. A statement of the grounds for the complaint.
 4. The relief requested including any demand for possession of the unit, damages, fees, costs, and any other relief.
 5. In an eviction proceeding, a statement the landlord has complied with the requirements of this Code prior to filing the complaint.
- (b) Eviction Complaint Requirements. Any Complaint for eviction shall be accompanied by the notice to quit required by Section 1.3 together with proof of service of such notice. A Complaint for eviction shall request the Court to issue an order requiring the defendant and person in possession to vacate the premises no less than five (5) days from the date of filing the date of filing the Complaint upon penalty of forcible eviction from the premises.
- (c) Complaint for Enforcement of Landlord obligations. A complaint for enforcement of landlord obligations shall request the Court to issue an order requiring the landlord to file an Answer within twenty-one (21) days of service of the Complaint.

(d) Summons and Service of the Complaint and Summons. Promptly after a Complaint under this Chapter is filed, but no more than five (5) days after the Complaint is filed, the Court shall issue a Summons. The Plaintiff is responsible for service of the Summons and Complaint upon the Defendant. In any eviction action, if after diligent effort, personal service cannot be had, service shall be made by posting a copy of the Summons and Complaint in some conspicuous place on the premises where it may be read conveniently. The person making service shall make a return of proof of service promptly, and in any event before the date set for hearing, which need not be verified, and which shall be filed with the Tribal Court Civil Clerk. The Summons shall inform the defendant that the time allowed for filing an Answer to the Complaint is twenty-one (21) days from the date of service on the defendant or posting, and no adjournment or continuance shall be made. The Summons issued in any eviction proceeding shall inform the defendant that if no Answer to the Complaint is timely filed, Default judgment may be taken, and that the defendant and all other occupants of the premises and their personal belongings will be forcibly evicted. The Summons shall also fix a date, not earlier than thirty (30) days nor later than forty-five (45) days after the filing of the Complaint for a trial on the merits of the action.

(e) Deferment of eviction.

1. In an action for eviction for failure to pay rent, where the defendant depends on social security or public assistance for funds for payment of rent, the Court may defer eviction for nonpayment of rent, where the reason for nonpayment of rent is delay in the receipt of such social security or public assistance funds,

provided that the defendant agrees in writing and on penalty of contempt, that when the check for social security or public assistance funds is received, it shall be delivered to the Court for payment of the rent.

2. In an action for eviction commenced during the months of November, December, January, or February, where weather conditions are below freezing, and or snow is on the ground, the tenant, lessee, or subtenant may request, and the Court may grant, a deferment of the eviction on the basis of threat to life, health, or safety of the tenant and other occupants if the following conditions are met:

- i. The Tenant posts bond to the Court in the amount of the rent due and that will become due during the period of deferment of the eviction, and twenty (20) percent of any other judgment requested and found to be due and owing to the landlord by the Court; and
- ii. The Tenant demonstrates that the deferment does not present a risk of health or safety of other tenants in the community or other occupants of the unit; and
- iii. The dwelling unit has not tested positive for methamphetamines; and
- iv. The basis for eviction is not drug-related criminal activity, or a violent crime. For purposes of this section, drug-related criminal activity is defined as the sale, purchase, manufacture, distribution, or transfer of illegal drugs or other controlled substances or drug related paraphernalia by any occupant of the dwelling unit, any member of the

tenant's household, or any guest or other person under an occupant's control. For purposes of this section, violent crime includes, but is not limited to, murder, manslaughter, assault, rape. Or sexual assault committed by any occupant of the dwelling unit, any member of the tenant's household, or any guest or other person under an occupant's control; and

v. The Tenant demonstrates that there is no risk to the property that will result from the deferment of the eviction; and

vi. The Tenant demonstrates that they are able and will abide by all conditions of the rental agreement or lease during the period of the deferment upon penalty of contempt of court, and eviction.

3. There shall be no other grounds for deferment of evictions permitted in Tribal Court under Tribal codified or customary law.

(f) Judgment. When a judgment is rendered for the plaintiff it may include delivery of possession of the dwelling unit to the plaintiff, plaintiff's legal costs and other costs in obtaining an order of eviction, and any unpaid rents, profits, or damages where the same was claimed in the Complaint.

(g) Court Costs. Court costs shall be taxed to the non-prevailing party.

Section 1.6. Forcible eviction.

Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of the eviction order, the defendant or

other occupant may be forcibly removed from the premises by the Oglala Sioux Tribe (“OST”) Department of Public Safety. Any order of eviction issued by the Court shall include an Order directing the OST Department of Public Safety to forcibly remove the defendant and any other occupants of the unit if any persons have failed to voluntarily vacate the unit by the time set by the Court in the Order of eviction. Forcible evictions shall be executed only between 8:00 a.m. and 8:00 p.m. on any day of the week.

Section 1.7 No Self-Help Eviction.

No landlord may compel a tenant to vacate premises in a forceful fashion that causes a breach of the peace. No landlord shall forcibly remove a tenant in actual possession of the property, without giving a notice to quit and obtaining a court order in accordance with the requirements provided in this Code. This provision shall not prevent landlords from repossessing abandoned units as that term is defined in Section 2.7 of this Code.

Section 2.0 Administrative Eviction Procedures for Drug Related and Violent Criminal Activity in OSLH Owned Housing Rental and Homeownership Units

Section 2.1 Purpose and Applicability

- (a) Purpose. Oglala Sioux (Lakota) Housing (OSLH) may conduct certain evictions through an expedited administrative process without the need for a court order as a means of protecting OSLH housing units from drug contamination, and protecting the health and safety of residents subject to increasing violent crime and drug-related criminal activity by relatives residing in OSLH rental units and homeownership units where the homeowner does not yet hold title to the property.