

- (b) Applicability. These procedures are applicable to eviction from OSLH owned or operated rentals and homes of any tenant or tenant's household members who engage(s) in, or the eviction of any tenant who, without coercion or intimidation, either permits or fails to prohibit, another household member, guest, or visitor, to engage in "Drug-Related Criminal Activity" or "Violent Criminal Activity" as those terms are defined in Section 2.2. All such evictions are governed by the procedures set forth in this Section, and are no longer subject to the eviction procedures set forth in Section 1.2.02 of this Landlord-Tenant Code.

Section 2.2 Definitions

"Ancillary Proceeding" means a proceeding after entry of an order of eviction in the original, or primary proceeding. An ancillary proceeding is subordinate to, and part of, the original or primary eviction proceeding. An ancillary proceeding shall be commenced by filing a motion by either OSLH or the Respondent.

"Drug-Related Criminal Activity" means the presence or possession of illegal drugs on or near the rental property, or the identification by a law enforcement agency of illegal drug activity, which includes the possession of illegal drugs with intent to manufacture, sell, distribute, or use such drug or drugs, on or off the premises by tenant or a household member, or on the premises by a guest or visitor. A criminal conviction in any court of competent jurisdiction of any listed occupant during the term of the lease shall also qualify as drug related criminal activity. Drug Related Criminal Activity shall include a positive test of the housing unit for the presence of methamphetamine.

“Eviction Judge” means a judge who is appointed by the OSLH Board of Directors to serve as a judge in the Office of Eviction Hearings and conduct hearings and issue decisions and orders with regard to complains for eviction filed by OSLH pursuant to these procedures.

“Household member” means a person who is listed as a permitted occupant on the tenant’s lease.

“Illegal Drug” means a controlled substance as that term is defined in 21 U.S.C. §802.

“Near a Rental Property” means anywhere within one hundred (100) yards of the boundary of an area that is owned, leased or assigned to OSLH for the purpose of providing housing pursuant to Tribal Ordinance No. 01-62.

“Reasonable Cause” means the existence of specific, articulable facts or circumstances that provide OSLH entity with reasonable suspicion that “Drug-Related Criminal Activity” or

“Violent Criminal Activity” has occurred, or is occurring, in or near a rental unit.

“Violent Criminal Activity” means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

Section 2.3 The Office of Eviction Hearings

(a) Creation of the Office of Eviction Hearings. The Office of Eviction Hearings “OEH,” is hereby created as an independent entity within OSLH.

(b) Jurisdiction of the OEH. The OEH shall have jurisdiction to hear all complaints for eviction brought by OSLH within the exterior boundaries of the Pine Ridge Indian

reservation for the eviction of tenants, household members, guests, or visitors based on Drug-Related Criminal Activity or Violent Criminal Activity.

(c) Appointment of Eviction Judge. The OSLH Board of Directors shall appoint at least two eviction judges, each of whom will be trained as a lawyer and admitted to practice law in a jurisdiction within the United States. The judges selected shall be retained as Administrative Law Judges (ALJ) and will be independent contractors. The OSLH Board of Directors will also hire a full-time Chief Clerk for the Office of Eviction Hearings. The Chief Clerk for the Administrative Law Court shall be responsible for scheduling hearings, ensuring that all pleadings and documents for hearings are timely transmitted to the ALJ, and receiving any documents filed by a tenant in a pending matter.

(d) Term and Removal or Termination. Eviction Judges shall serve for a term of three (3) years and their contract may be terminated by the OSLH with or without cause, or if OSLH decides to end the Administrative Eviction process.

(e) Administration of the OEH. The ALJ shall have the following responsibilities:

- (1) To oversee the general administration and functioning of the OEH;
- (2) To supervise the Chief Clerk, who shall assist the ALJ in the general administration and functioning of the OEH;
- (3) To hear eviction cases filed before the OEH by OSLH;
- (4) To file an annual report with the OSLH Board of Directors documenting the activities of the OEH; and

- (5) To make recommendations to the OSLH Board of Directors for improving the functioning of the OEH.

Section 2.3 Notice to Quit

(a) Reasonable Cause for Issuance of a Notice to Quit. Whenever OSLH has evidence that Drug-Related Criminal Activity or Violent Criminal Activity has occurred or is occurring in or near a rental unit, the entity shall issue a written Notice to Quit Possession to the individual(s) who is/are engaging in, and/or the tenant(s) who permit(s) or fails to prohibit others from engaging in, the prohibited conduct, stating the grounds upon which the notice is based.

(b) Form and Service of Notice. A Notice to Quit Possession shall be in the form required by Section 3 of this Landlord-Tenant Code.

Section 2.4 Complaint and Summons

(a) Complaint. If the tenant, and/or tenant(s) household member subject to the Notice to Quit Possession fail(s) to vacate the rental unit by the date set forth in the notice to quit, OSLH will file a Complaint for Eviction with the OEH seeking an order of eviction. A complaint for eviction shall contain all the following information:

- (1) The name(s) of the individual(s), visitor(s), and tenant(s) who have allegedly engaged in, or knowingly and voluntarily permitted a household member, guest or visitor to engage in, the prohibited conduct and against whom an order of eviction is sought (the "Respondent(s)");
- (2) The address of the rental unit;

- (3) A copy of the lease or rental agreement;
- (4) A copy of the Notice to Quit Possession and proof of service in accordance with Section 4 (b) above;
- (5) The alleged conduct giving rise to the complaint for eviction, including a statement of whether the eviction is for Drug Related Criminal Activity, Violent Criminal Conduct, or both.

(b) Scheduling and Notice of Hearing. The Chief Clerk of the Office of Eviction Hearings shall set a date for hearing the complaint, which date shall not be less than five (5) nor more than ten (10) days from the filing of the complaint. The Chief Clerk shall also cause the issuance of a summons to the Respondent(s) ordering them to appear before an Eviction Judge at the place, date and time set forth on the summons.

Section 2.5 Reply to Summons and Complaint

- (a) Extension of Hearing Date. Upon Respondent's written request, which must be filed at least twenty-four (24) hours before the scheduled starting time of the hearing, the Eviction Judge may grant one five (5) day continuance of the hearing date.
- (b) Appearance and Written Reply. The Respondent must appear before the Eviction Judge at the place, date time set forth on the summons, or any continued date thereof. The Respondent may, but is not required to, file a written reply on or before the date of the hearing set forth on the summons.
- (c) Right to Examine Files. The Respondent shall have the right to examine any evidence to be presented at hearing by OSLH that is directly relevant to the eviction proceeding, The

Respondent's failure to make such request before the scheduled hearing is not a ground for the postponement of an otherwise properly noticed hearing unless the Respondent can show good cause why he or she failed to request access to the file(s) prior to the scheduled hearing.

Section 2.6 Conduct of Eviction Hearings

Conduct of Hearings. An eviction hearing (the original or primary hearing) may be held face-to-face, telephonically or by videoconference at the discretion of the Eviction Judge or at the request of the Respondent, provided that if a Respondent objects to holding the hearing by teleconference, it shall be held face-to-face or by videoconference. A hearing may be continued or carried over to another date in the discretion of the Eviction Judge if necessary to hear all the witnesses to be called and receive all the evidence to be submitted. A hearing that is continued or carried over to another date shall be a part of the original or primary hearing and is not an ancillary proceeding.

- (a) Record of Hearing. The Chief Clerk shall ensure that an electronic or stenographic recording is made of all hearings. The Eviction Judge shall ensure that all present for the hearing are identified for the record. A copy of the transcript of a hearing will be made available upon the written request to the Chief Clerk by OSLH or Respondent(s).
- (b) Authority of the Eviction Judge. The Eviction Judge shall have the authority to:

- (1) Issue subpoenas to compel the attendance and testimony of witnesses or to produce any documents relevant to the eviction hearing;
- (2) Administer oaths to persons called to testify before it;

- (3) To rule on the admissibility of evidence;
 - (4) To examine any witness called by OSLH or the Respondent;
 - (5) To weigh the evidence presented at an eviction hearing and issue a written decision as to whether the Respondent(s) should be evicted; and
 - (6) To issue Orders of Eviction and Default Judgements when a party fails to appear for hearing.
- (c) Right to Counsel. A Respondent has a right to be represented by counsel or other representative of his or her choosing and at his or her own expense.
- (d) Right to Call and Cross Examine Witnesses. A Respondent has a right to call his or her own witnesses and to confront and cross-examine witnesses presented by the OSLH entity or called by the Eviction Judge. OSLH has the right to call its own witnesses and to confront and cross-examine witnesses presented by the Respondent or called by the Eviction Judge.
- (e) Right to Confront Evidence and Present Defenses. A Respondent has the right to confront the evidence presented by OSLH, and also has the right to present any affirmative legal or equitable defense which the Respondent may have. OSLH has the right to confront the evidence presented by the Respondent, and also has the right to present any affirmative legal or equitable defense which the respondent may have.
- (f) Evidence. No formal rules of evidence apply to eviction hearings, but a judge may use the Federal Rules of Evidence, and the judicial and scholarly interpretation thereof, as

guidance in ruling on the admissibility of evidence, and in deciding the weight to be given to any evidence that is admitted.

(1) A judge may admit any written, oral, documentary, or demonstrative evidence that is relevant, reliable and probative and not privileged under Oglala Sioux Tribal law or Federal law.

(2) Evidence of the customs and traditions of the Tribe shall be admissible.

(3) A judge may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, undue confusion of the issues, unfair surprise or delay, or if it is unnecessarily repetitive and cumulative.

(4) A judge may admit a copy of a document into evidence or may require the admission of the original document. After examining the original document, the judge may substitute a copy of the original document and return the original.

(5) The judge shall take official notice of any public record of any matter of which federal courts may take judicial notice.

(6) The judge shall determine the weight given to any evidence admitted.

(7) Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection shall appear in the record.

(g) Burden of Proof. OSLH has the burden of proving by a preponderance of the evidence that the Respondent(s) has/have engaged in Drug-Related Criminal Activity or Violent Criminal Activity in violation of the Lease Agreement, and thus, should be evicted.