

(h) Record of Decision. The Complaint filed by OSLH, all documentary or other evidence admitted at the hearing, and the electronic or stenographic record of the hearing will constitute the record for the decision.

(i) Decision of the Eviction Judge.

(1) The Eviction Judge shall issue a written decision within seven (7) days of the close of the hearing.

(2) The decision of the Eviction Judge shall be based exclusively on the evidence, documentary or testimonial, introduced at the hearing, and on all applicable policy, regulations, and law.

(3) The decision shall include a summary of the evidence admitted and heard at the hearing and findings of fact. The decision shall also set forth the Eviction Judge's analysis of the evidence and the application of the relevant law and policy to the facts of the case, including the weight given to all evidence admitted and the conclusions drawn therefrom by the Eviction Judge.

(4) The decision shall include an order of eviction if the Eviction Judge concludes that OSLH has met its burden of proof.

(5) Alternatively, the decision shall deny the request of OSLH for an Order of Eviction if OSLH failed to meet its burden of proof.

(j) Default. If the Respondent fails to appear for the hearing, the Eviction Judge shall issue a decision noting that the Respondent failed to appear and that an order of eviction is being entered by reason of default (a Default Eviction Order). The Eviction Judge shall grant

another hearing if the respondent files a request for a new hearing date within twenty-four (24) hours of the time the original hearing was scheduled for and provides proof the respondent was not served with the Notice of Hearing in the matter, provided that the new hearing shall be scheduled for a date that is no more than five (5) days from the date of the original hearing.

(k) Finality. A decision of the Eviction Judge is final and not subject to appeal.

Section 2.7 Execution of an Order of Eviction

- (a) An order of eviction shall be executed by a duly authorized law enforcement officer of the Oglala Sioux Department of Public Safety (OST-DPS) within twenty-four (24) hours of its issuance unless a Respondent who was issued a default eviction order has requested a new hearing date.

- (b) If the Eviction Judge determined that the tenant(s) has/have permitted or failed to prohibit a household member, guest or visitor from engaging in the prohibited conduct but has not directly engaged in Drug-Related Criminal Activity, and the OSLH housing unit is **not** contaminated with methamphetamines or other illegal drugs, the Eviction Judge may, upon good cause shown at the hearing, stay the execution of the eviction order for a period of up to one (1) year from the date of the entry of the decision, provided that if, during that one (1) year period, OSLH can demonstrate, in an ancillary proceeding, by a preponderance of the evidence that the tenant has engaged in or allowed a household member, guest or visitor to engage in Drug-Related Criminal Activity or Violent Criminal Activity, the Eviction Judge shall order the immediate execution of the eviction order.

Section 2.8 Effect of Decision.

- (a) Respondent Ineligible for Public Housing. If the Eviction Judge grants the request of OSLH for an order of eviction, the Respondent(s) shall be ineligible for a period of one (1) year from the date of the execution of the order of eviction.
- (b) OSLH Prohibited from Filing a New Complaint. If the Eviction Judge denies the request of OSLH for an order of eviction, OSLH shall be prohibited from filing a new Complaint for thirty (30) days from the date of the decision, and any new Complaint must be based on new evidence and conduct that has allegedly occurred after the date of the decision denying the order of eviction.

Section 2.9 Computing Time

- (a) Period Stated in Days. Unless otherwise specified, all periods stated in days are calendar days and include weekends and legal holidays observed by the Oglala Sioux Tribe. The day of the event that triggers the period should be excluded. The last day of the period should be included, but if the last day is a Saturday, Sunday, or legal holiday observed by the Oglala Sioux Tribe, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (b) Period Stated in Hours. If the time period is stated in hours, begin counting immediately on the occurrence of the event that triggers the period. If the period would end on a Saturday, Sunday, or legal holiday observed by the Oglala Sioux Tribe, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

- (c) Inaccessibility of the Clerk's Office. If the Clerk's Office of the OEH is inaccessible and the time period is stated in days, the time for filing or other form of compliance is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday observed by the Oglala Sioux Tribe. If the time period is stated in hours, the time for filing or other form of compliance is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday observed by the Oglala Sioux Tribe.

Section 3.0 Abandoned Dwelling Units.

- (a) A landlord may regain possession of a dwelling unit, in accordance with this Section, where the tenant, lessee, or subtenant, has vacated the unit without notice to the landlord, which is evidenced by removal by the tenant or his agent of substantially all of his possessions and personal effects from the premises, or evidence that the Tenant has been absent from the unit for ten (10) or more continuous days and either:
1. non-payment of rent for one (1) or more months, or
 2. terminated water or electrical service, or zero propane in the propane tank for five (5) or more days, or
 3. an express statement by the tenant that he does not intend to occupy the premises after a specified date; or
 4. The landlord's receipt of evidence that the Tenant is incarcerated in any facility for more than 30 days, or is leasing a different property for more than 30 days; or
 5. The landlord's receipt of evidence that the Tenant has been placed in a long-term care facility, a nursing home, or an assisted living home, and is not expected to return for

more than 30 days, or is under contract for another facility's housing services for more than 30 days.

(b) Notice Required. The landlord must send notice to the tenant, lessee, or subtenant, by affixing it on a conspicuous part of the premises where it may be read conveniently, and by both by regular mail, postage prepaid, and by certified mail, return receipt requested, at the tenant, lessee, or subtenant's last known mailing address, stating that:

1. the landlord has reason to believe that the tenant, lessee, or subtenant has abandoned the dwelling unit; and
2. the landlord intends to re-enter and take possession of the dwelling unit unless the occupant contacts him within five (5) business days of the date the notice is mailed. Business days include all days on which the landlord personnel are regularly open for business; and
3. if the tenant does not contact the landlord, the landlord intends to remove any possession and personal effects remaining in the premises and to rent the premises; and
4. if the tenant does not reclaim such possessions and personal effects within thirty (30) days after the notice, they will be disposed of by public sale, or if deemed to be of no or nominal value, by placing them in garbage disposal facilities.

The notice shall include a telephone number and mailing address where the landlord can be contacted.

- (c) Reentry and Possession by the Landlord. If the notice is returned as undeliverable, or if the tenant fails to contact the landlord within five (5) days of the mailing of the notice, the landlord may reenter and take possession of the dwelling unit, at which time any rental agreement in effect shall terminate.
- (d) The landlord need not comply with the eviction procedures set forth in this Chapter 46-2 of the Law and Order Code to obtain possession of a dwelling unit that has been abandoned, so long as the landlord complies with this Section 3.0.

Section 4.0 Methamphetamine Contaminated Units owned by the Oglala Sioux (Lakota) Housing or the Oglala Sioux Tribe - Special Exception to the Code.

In recognition of the serious public health and safety risk posed by methamphetamine contamination of public housing units owned and operated by the Oglala Sioux Lakota Housing Authority, (OSLH) or the Oglala Sioux Tribe (OST), and in recognition of the extraordinary damage to such units and the high cost of remediating such contamination, the Tribe hereby authorizes OSLH (for units operated by the OSLH) and OST (for units operated by the OST) to terminate the lease of any Tenant whose leased unit tests above 1.0 $\mu\text{g}/100 \text{ cm}^3$ (micrograms per 100 cubic centimeters) in any testing location, and to issue an Order condemning such unit and order remediation of such unit, and restricting access by any person to the Unit until the Court has heard a Complaint under this Code and issued its determination on a Complaint for eviction. Such right shall only be granted to OSLH or OST, and only after approval of the issuance of such order for condemnation and remediation by the Chief Executive Officer of the OSLH for OSLH operated units, and the OST President for OST operated units. No

Tenant shall be permitted under this Code to file an action against the OSLH or the OST for the issuance of such order.

Section 5.0 Landlord obligations: Tenant's remedies against Landlord.

(a) Obligation to Preserve Quiet Enjoyment of the Dwelling Unit. A landlord shall deliver the leased premises to the tenant and secure his quiet enjoyment thereof against all lawful claimants. If the landlord unlawfully removes or excludes the tenant from the premises, except for abandoned units as provided for under Section 3.0 of this Chapter, or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the dwelling unit, the tenant may sue for injunctive relief under this Chapter, recover possession by suit under this Chapter, or terminate the rental agreement and, in any case, recover from the landlord damages in an amount equal to one month's rent and the return of any advance rent and deposit paid to the tenant to the landlord.

(b) Failure of Landlord to repair premises resulting in uninhabitable dwelling unit: Tenant's remedies. For purposes of this Section, a dwelling unit is considered uninhabitable if it lacks a functioning heating system, water system, sewage system or lacks electricity, or is structurally unsound resulting in an immediate threat of serious injury or loss of life to the occupants. If:

1. The tenant has entered into a lease with a landlord that obligates the landlord to repair the dwelling unit; and
2. The tenant has delivered written notice to the landlord of the need for dwelling unit repair necessary to make the unit fit for human habitation, and the landlord has not repaired the unit within ten (10) days of the

delivery of the written notice or responded with a reasonable explanation of why the repair will take longer than ten (10) days. The landlord must provide a written explanation within the ten (10) days after the landlord received the tenant's written notice; and

3. The repair needed is not the result of damages caused by the Tenant, their household members, or guests; then the Tenant may pay for the repair by a certified professional certified to perform the repair and deduct the expense of such repair from the rent; or the Tenant may vacate the premises, in which case he shall be discharged from additional charges of rent or performance of other conditions.

If the cost of necessary repair exceeds one month's rent, after written notice to the landlord stating the specific reason for the withholding, the tenant may withhold payment of rent and immediately deposit it in a separate bank or savings and loan account maintained only for the purpose of making repairs until such time as the landlord makes the repairs, at which time the tenant shall release the deposit to the landlord or until sufficient money is accumulated in the account for the tenant to cause the repairs to be made and paid for. The tenant must deliver to the landlord written notice of the establishment of such account immediately upon deposit of funds and deposit of any subsequent funds into such account.

Section 6.0 Other Provisions.

- (a) Joinder of Actions. An action brought under this Chapter cannot be brought in connection with any other proceeding under any other provision of the Law and Order Code.
- (b) Statute of Limitations. Notwithstanding any other provision of Oglala Sioux Tribal Law, the Statute of Limitations applicable to civil actions shall not apply to bar an award of damages to a Landlord for unpaid rents or other charges where the Landlord, in their sole discretion, has permitted the Tenant to continue to occupy a housing unit and for unpaid rents to accrue for more than two (2) years without filing an eviction complaint. The Landlord shall be entitled to commence an action under this Code for all unpaid rents up to the time a Complaint is filed under this Code.
- (c) Death of Plaintiff. The legal representative of a potential plaintiff or plaintiff in a pending action may pursue an action under this Chapter after the death of the plaintiff.

History: Ordinance 21-25