

Sec. 1-391. - Purpose.

(a)

The purpose of this Division is:

(1)

To promote an understanding concerning the rights of Tribal members, other occupants and The Mohegan Tribe with respect to dwellings and the interests granted to occupants through the terms of the lease agreements.

(2)

To preserve and protect the rights of Tribal members and The Mohegan Tribe in the orderly lease and occupancy of dwellings.

(3)

To provide for an orderly and fair means of evicting those persons found to have committed a violation or default of their lease agreement.

(Ord. No. 2004-06, Ch. 1 § 3, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-392. - Exclusion.

The provisions of this Division shall apply only to the leasing of residential dwellings and the appurtenances thereto by The Mohegan Tribe. This Division shall not apply to any commercial leasing by The Mohegan Tribe or any entity formed, owned or controlled by The Tribe. It also shall not apply to the Mohegan Sober House.

(Ord. No. 2004-06, Ch. 1 § 4, 12-1-2004; Res. No. 2004-36, 12-1-2004; Res. No. 2013-18, 1-23-2013)

Sec. 1-393. - Scope.

(a)

The provisions of this Division shall apply only to the following matters relative to dwellings:

(1)

The determination of the interests of the occupant or The Tribe under a valid lease agreement to dwellings located on trust lands.

(2)

The rights and obligations of occupants to their dwellings under the lease agreement.

(3)

With respect to the provisions of this Division regarding evictions, the determination of any interest in the dwelling asserted by non-Tribal members.

(Ord. No. 2004-06, Ch. 2, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-394. - Definitions.

For the purpose of this Division, the following words and terms shall have the meanings respectively ascribed:

Dwelling means a house, apartment, or other residential unit located on trust lands. No residential unit located on property other than trust lands shall be deemed a dwelling for purposes of this Division.

Lease Agreement means a written agreement between The Mohegan Tribe/Tribal Housing Authority and a Tribal member and in some instances, non-Tribal member conferring rights to occupy a dwelling located on trust land.

Occupant means a Tribal member who is the holder of or party to a valid lease agreement and also includes a non-Tribal member who claims an interest in the dwelling by or through a Tribal member. Unless specifically recognized by Tribal Law or the policies, procedures, and regulations of The Mohegan Tribal Housing Authority, no non-Tribal member shall be deemed to be an occupant, nor shall such person have any legal or equitable right in a dwelling.

Tribal Member means an individual who is an enrolled member of The Mohegan Tribe.

Tribal Court shall mean the courts established by The Mohegan Tribal Law and Order Code (Ordinance No. 2002-06, enacted by Tribal Resolution no. 2002-27).

Trust Land(s) means any land held in trust by the United States of America for the benefit of The Mohegan Tribe.

Unauthorized Resident means any person occupying, or residing in, a dwelling, who is not an occupant.

(Ord. No. 2004-06, Ch. 3, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-395. - Limitation on Self-Help Remedies.

The remedies for defaults under a lease agreement provided for in this Division shall be exclusive. No "self-help" remedies including, but not limited to, "lock-outs" shall be valid or permitted. An occupant may voluntarily surrender a dwelling to The Mohegan Tribe only with the prior written agreement of The Mohegan Tribal Housing Authority and upon satisfaction of the terms and conditions of such written agreement. The rights of The Tribe, as provided in this Division, cannot be modified by contract.

(Ord. No. 2004-06, Ch. 4 § 1, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-396. - Jurisdiction.

(a)

The Tribal Court shall have exclusive jurisdiction to hear an action to determine the rights of any party arising under a lease agreement. Such actions shall be tried to The Tribal Court without any right to a trial by jury.

(b)

The Tribal Court shall have exclusive jurisdiction to hear an eviction action as herein provided. Such actions shall be tried to The Tribal Court without any right to a trial by jury.

(Ord. No. 2004-06, Ch. 4 § 2, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-397. - Definition of Default.

(a)

A person commits a default if, he or she:

(1)

Continues in possession of the dwelling, or any part thereof, after the expiration of the term provided for in a lease agreement; or

(2)

Fails to pay any sum as required by the lease agreement; or

(3)

Commits a breach of any other agreement or covenant contained in the lease agreement; or

(4)

Is a person in possession or occupation of a dwelling in a manner that is not expressly permitted by Tribal Law or the policies, procedures, and regulations of The Mohegan Tribal Housing Authority; or

(5)

Is an unauthorized resident of a dwelling.

(Ord. No. 2004-06, Ch. 4 § 3, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-398. - Remedies for Default.

(a)

The Mohegan Tribal Housing Authority may, in the exercise of its sole discretion, serve notice upon any person committing a default under his or her lease agreement, specifying the basis for such default. If the basis for the default is one of the grounds set forth in [Section 1-397\(a\)\(2\), \(3\) or \(4\)](#), said notice shall set forth a period of not less than three (3) and no more than ten (10) days to cure the same. If such person fails to cure the basis for the default within the time period allowed The Mohegan Tribal Housing Authority may, in the exercise of its sole discretion, commence eviction proceedings against such person.

(b)

If the basis for the default is one of the grounds set forth in [Section 1-397\(a\)\(1\)](#) or (5), said notice shall provide for a period of no less than ten (10) days and no more than fifteen (15) days for the person to whom the notice is directed to vacate the dwelling. If such person fails to vacate within the time set forth in the notice, The Mohegan Tribal Housing Authority may, in the exercise of its sole discretion, commence eviction proceedings against such person.

(c)

All notices required by the preceding Paragraph shall be served by a neutral person and may be served upon a person committing unlawful detainer:

(1)

By delivering a copy to such person; or

(2)

By leaving a copy of such notice at the dwelling.

(Ord. No. 2004-06, Ch. 4 § 4, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-399. – Eviction Proceedings.

(a)

Except as provided hereafter, all eviction proceedings shall be governed by the Rules of Civil Procedure established in The Mohegan Tribe Law and Order Code, [Chapter 1](#), Article I, Division 3.

(b)

If the timeframe to cure the unlawful detainer has run and no cure has taken place, a complaint for eviction may be filed in The Tribal Court. An action for eviction shall be commenced by filing a complaint with the Clerk of The Tribal Court. Upon filing the complaint, the Clerk shall set a hearing date which shall not be more than twenty (20) calendar days from the date of filing.

(c)

The plaintiff's eviction complaint, in addition to setting forth the facts and allegations on which the plaintiff seeks to recover, may also set forth any relevant circumstances which may have accompanied the alleged default and claim damages or compensation for the occupation of the dwelling or both. When a default is charged, after failure to make all or part payment of rent, the complaint must state the amount of rent owed.

(d)

In addition to the means of service set forth in the Law and Order Code, a complaint in eviction proceedings may be served by a proper person leaving a copy of the complaint at the defendant's usual place of abode.

(e)

Upon the filing of the complaint, the Clerk of Court shall issue a summons in accordance with the Rules of Civil Procedure as contained in the Law and Order Code of The Mohegan Tribe.

(f)

A defendant served with a complaint and summons shall have the right to file an answer denying the allegations contained in the complaint and/or setting forth any factual disputes or defenses. A defendant must file an answer specifically stating any of the defenses described below in [Section 1-400](#) that he/she is asserting. Any answer filed under this Section must be served on the opposing party no later than five (5) days before the scheduled hearing date.

(Ord. No. 2004-06, Ch. 4 § 5, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-400. - Defenses to an Alleged Default.

(a)

The Court shall grant the remedies allowed in this Division, unless the Court makes a finding that one or more of the following defenses apply:

(1)

The dwelling is untenable, uninhabitable or constitutes a situation where there is a constructive eviction of the occupant, in that the dwelling is in such a condition due to the fault of The Mohegan Tribal Housing Authority and that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.

(2)

The Mohegan Tribal Housing Authority has failed or refused to make repairs which are its responsibility after a reasonable demand by an occupant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the dwelling.

(3)

There are monies due and owing to the occupant because he/she has been required to make repairs which are the obligation of The Mohegan Tribal Housing Authority and The Mohegan Tribal Housing Authority has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. An occupant may be evicted after such a period if he/she fails or refuses to pay the reasonable rental value of the dwelling.

(4)

That due to the conduct of The Mohegan Tribal Housing Authority there is injury to the occupant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of fraud,

misrepresentation and breaches of serious and material obligations for public health, safety and peace standards.

(5)

That there are such serious and material breaches of applicable housing law on the part of The Mohegan Tribal Housing Authority that it would be unjust to grant them a remedy.

(6)

Any other material or relevant fact the occupant might present that may explain why his/her eviction is unjust and unfair.

(Ord. No. 2004-06, Ch. 4 § 6, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Sec. 1-401. - Judgment.

(a)

Within seven (7) calendar days of the date of the hearing, The Tribal Court shall grant and enter judgment. If the Court renders judgment in favor of the plaintiff granting the plaintiff the remedy of eviction against the defendant, judgment shall be entered for the plaintiff. Such judgment shall confirm in the plaintiff the sole and exclusive possession of the dwelling and order the defendant to quit and surrender possession of the dwelling, all by such date as the judgment shall specify.

(b)

The judgment shall declare the termination and forfeiture of any occupancy agreement ("Order of Eviction"). The Order of Eviction shall further: (1) require the defendant to remove his or her possessions and personal effects from the dwelling by the date and time specified on the Order of Eviction; (2) order The Tribal Police, in the event the defendant has not removed himself or herself and their possessions from the dwelling by the time specified, to remove such defendant and remove, or cause to be removed (at the request of The Mohegan Tribal Housing Authority), the defendant's personal effects; (3) order The Mohegan Tribal Housing Authority to store, or cause to be stored, the said possessions and personal effects at the expense of the plaintiff but said expense shall be charged against the defendant; and (4) order that if such possessions and effects are not called for by the defendant and the expense of such removal and storage is not paid to the plaintiff within fifteen (15) days after such eviction, the defendant shall forfeit such possessions and personal effects to the plaintiff and the plaintiff may dispose of them as the plaintiff deems appropriate. Any surplus of funds over the amount owed that may result from the disposition shall, after deduction for any costs of sale, be returned to the defendant.

(c)

The judge shall also assess damage caused to the plaintiff by the default under the lease agreement, including damage for waste by the defendant, and any sums due The Mohegan Tribal Housing Authority under the lease agreement. Any amount

owing The Mohegan Tribe/Tribal Housing Authority (if the plaintiff), including rent and damages assessed and ordered, may in addition to ordinary collection procedures, upon motion of the plaintiff attach to and be withheld from the next available per capita distribution pursuant to Section 2-183(c)(1) and (2).

(d)

Whenever an Order of Eviction is entered, such defendant and any other person occupying the dwelling shall remove themselves, their possessions and all personal effects on the date and time as set forth on the Order of Eviction unless execution has been stayed by an order of The Tribal Court.

(e)

The Tribal Police shall, at least forty-eight (48) hours prior to the date and time specified in the Order of Eviction, use reasonable efforts to locate and notify the defendant or occupant of the date and time such eviction is to take place. The notice shall be served upon each defendant and upon any other person in occupancy, either personally or at the premises, of a true copy of The Tribal Court judgment ordering eviction.

(f)

Such notice shall be on a form prescribed by The Tribal Court and shall be in clear and simple language and in readable format and shall contain a copy of the Order of Eviction.

(g)

The Tribal Police shall return to the dwelling on the date and time of the Order of Eviction and shall execute the requirements of the said Order.

(Ord. No. 2004-06, Ch. 4 § 7, 12-1-2004; Res. No. 2004-36, 12-1-2004)

Secs. 1-402—1-404. - Reserved.