

Chapter 4. Rent Payments, Collection, and Eviction Procedures for Tribal Rental Units.

Section 1. Authority, Purpose.

- 1-1. *Authority.* In accordance with Sections 6.01(a) and (c) and 6.02(b) of the Housing Commission Ordinance, Ordinance #04-700-01, the Housing Commission hereby promulgates these regulations for rent payments, delinquent collections, and eviction procedures for Tribally-owned rental units.
- 1-2. *Purpose.* The purposes of this Chapter is to establish procedures for the collection of rent payments from individual or families renting homes through the Tribe's Housing Department and to establish a comprehensive statement of policy and actions, including eviction as a remedy of last resort, which will be taken to enforce the terms of the lease including, payment of rent.

These regulations are designed to serve as:

- a. A policy for the Housing Department to use in collecting rents.
 - b. A document that provides for consistent, equitable, and uniform treatment of clients.
 - c. A basis for decision-making by Housing Department staff.
 - d. A training manual for newly-hired or appointed staff.
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- 1-3. *Application.* These regulations are applicable to all tenants residing in Tribal rental units.

Section 2. Definitions.

- 2-1. *General.* For purposes of this regulation, certain terms are defined in this section. The word "shall" is always mandatory and not merely advisory. Unless defined elsewhere, terms defined in Chapter 1 and the Housing Commission Ordinance are considered as defined therein for purposes of this Chapter.
- 2-2. *Head of Household* means the Tribal Member who is the primary resident on a lease for a Tribally-owned rental unit.
- 2-3. *Payment Agreement* means a written document executed by the Head of Household and the Housing Department, agreeing to the terms of repayment for a delinquent account.
- 2-4. *Tenant* means a person who is listed as a tenant on a lease for a Tribally-owned rental unit.

Section 3. Requirements and Procedures.

- 3-1. *Rent.* The amount of monthly rent will be determined prior to a tenant's occupancy as stipulated in the lease agreement.
- 3-2. *Income-Based Rent.* The Tribe has both income base subsidy rental units and fair market value rental units. If a tenant is in an income based subsidy rental unit, the tenant's rent shall be changed based on the tenants' change of income. Any change in the monthly rent required shall be determined in accordance with Tribal law.
- 3-3. *Other Charges.* Additional charges other than rent payments may be required as follow:
- a. Charges for damages caused to the rental unit, property grounds or its furnishings;
 - b. Agreed-upon repayments of delinquent accounts;
 - c. Other charges as specified in the Lease Agreement, or in Chapters 2, 3, and 6 of the Housing Commission Regulations, or in any other regulations adopted by the Tribe.
- 3-4. *Due Date for Rent and Other Charges.* All rent or other charges for the current month shall be paid on or before the 15th day of each month without billing or prior notice. Payments not received on or before this date will be considered delinquent, unless the tenant has entered into a written Payment Agreement with the Housing Department to pay the amount due at a later date.
- 3-5. *Payment Agreements.* If a tenant is unable to make a payment for current rent or other charges when due, the tenant may request an extension from the Housing Department. Extensions shall be authorized and documented by execution of a "Payment Agreement" between the tenant and the Housing Department Director according to the following procedures:
- a. Payment Agreements may include provisions allowing delayed payment of rent or other charges. Payment Agreements must include a schedule for repayment of any amounts that are delinquent. Participants are encouraged, and may be required, to agree to have direct payments made to the Housing Department in the form of wage assignments, within the limits allowed by the law.
 - b. The Tribe, duly represented by the Housing Director, shall approve the first request for Payment Agreement in situations of unusual temporary financial hardship. A subsequent request for a Payment Agreement will be approved only if an unusual temporary financial hardship is proven and the payment records of the tenant during the preceding 6 months, or length of tenancy if less than 6 months, shows no delinquent payments, and no Payment Agreement has been executed during the prior year, or length of tenancy is less than one year. For purposes of this paragraph, circumstances that warrant financial hardship include, but are not limited to, the following:

1. Unusual or unexpected family expenses, such as a death in the family or high medical expenses not covered by insurance. The term “unusual and unexpected family expenses” does not include higher than usual normal expenses such as grocery bills, utility bills or store bills; or
 2. Sudden and unexpected loss of income.
- c. If a tenant continues to fall further behind in rent or other charges, even with the relief provided under a Payment Agreement, the Director will determine whether the family is capable of adhering to any form of payment agreements. If a tenant is able to pay current charges, but is unable to pay past balances, the Director may authorize entering into a new Agreement. The new Payment Agreement may include a reduction in the amount of repayment required each month to repay the balance due, but the Director must require some repayment of the balance each month.
 - d. If the Director denies a tenant’s request to enter into, or renegotiate, a Payment Agreement, the tenant may appeal the decision to the Housing Commission according to Article VI, Section 6.03 (a)(1) of the Housing Ordinance, Ordinance #04-700-01.
 - e. Payment Agreements are binding and must be honored by the tenant. Tenants who fail to make good faith efforts to comply with the terms of a Payment Agreement may forfeit their right to obtain time to cure a delinquency. A Notice of Termination will be issued and eviction proceedings instituted, if the Director determines that a tenant has failed to make good faith efforts to honor his obligations under a Payment Agreement.

Section 4. Delinquent Accounts.

- 4-1. *Notice of Delinquency.* All tenant accounts will be reviewed by the Director. If a tenant is still delinquent on the sixteenth (16th) day of the month a “Notice of Delinquency” will be sent to the tenant by the Housing Department. The Notice of Delinquency will state the following:
- a. The type of charge (rent, other charges) that is delinquent;
 - b. The date the rent or other charges were due;
 - c. The amount of rent or other charges that is in arrears;
 - d. A statement that asks the tenant to pay the arrearage upon receipt;

- e. If payment cannot be made upon receipt of the Notice of Delinquency, the tenant must execute a Payment Agreement with the Housing Department within seven (7) days of the date of the Notice of delinquency; and
 - f. If the tenant fails to pay the arrearages within full or to enter into a Payment Agreement with the Housing Department within seven (7) days of the date of the Notice of delinquency, the Department will issue a Notice of Termination.
- 4-2. *Notice of Termination.* If within seven (7) days after the date of the Notice of Delinquency, a tenant fails to either pay the delinquent account or to execute a Payment Agreement, the Housing Department shall send by certified mail, hand delivery, or Return Receipt Requested Delivery, a “Notice of Termination” to the tenant. The Notice of Termination shall notify the tenant that the tenant has twenty (20) days to either contact the Housing Director to execute a Payment Agreement or vacate the premises. The Notice of Termination shall state the following:
- a. The type of charge (rent, other charges) that is delinquent;
 - b. The date the rent or other charges were due;
 - c. The total amount of rent or other charges the tenant is in arrears, including any additional amounts that have become delinquent since the Notice of Delinquency was sent;
 - d. Notice that the tenant must pay the rent or other charges in arrears upon receipt, or that the tenant must pay the arrearages, execute a Payment Agreement, or that the tenant should vacate the premises upon expiration of the 30 days from the date of the Notice of Termination to avoid eviction proceedings.

Section 5. Unlawful Detainer Proceedings.

- 5-1. *Obligation to Vacate the Premises.* Any tenant who has received all of the notices above and has failed to pay the amount of arrearages in full or execute a Payment Agreement or comply with the terms of an executed Payment Agreement must vacate the premises rented from the Tribe within 20 days of the date of the Notice of Termination.
- 5-2. *Court Proceedings.* If a tenant fails to vacate the premises within the twenty (20) days provided, the Department shall commence unlawful detainer proceedings against that tenant before the Tribal Court. Once a complaint for unlawful detainer proceedings has been filed with the Court, the Department may agree to file a motion to dismiss those proceedings only if one of the following occurs:
- a. The tenant pays the entire amount of rent or other charges owed; or

- b. The tenant enters into a Payment Agreement with the Director, which includes assignment of the maximum percent of wages allowed by the law or any other certain regular income due to the tenant.
- 5-3. *Decline to Dismiss.* The Department may decline to dismiss eviction proceedings and continue with termination of the lease agreement if the Department has previously filed an eviction proceeding against the same tenant within the prior 12-month period or the tenant received 2 or more Notices of Termination during the tenancy period.
- 5-4. *Eviction Procedure.* If after notice and hearing, the Tribal Court enters an order evicting the tenant from the premises, the Department shall be entitled to request the assistance of the Public Safety Department in executing the order and evicting the tenant.

Section 6. Leaving with a Delinquency.

- 6-1. *Effect of Leaving with a Delinquency.* If a tenant voluntarily vacates or is evicted from a unit without paying all amounts due to the Tribe, the tenant shall be ineligible to renew their lease agreement with the Tribe and no new lease may be executed until their account is paid in full.
- 6-2. *Collection of Delinquency.* The fact that a tenant vacates or is evicted from a rental unit with amounts still owed to the Tribe does not free the former tenant of his responsibility to pay the amount owed in full. Upon the tenant vacating or being evicted from the rental unit, his account will be reconciled to reflect outstanding rents or other charges due to the Tribe, the cost of any damages to the rental unit and any other charges to be assessed against the former tenant. The Tribe may attempt to collect amounts owed on delinquent accounts using any lawful method, including, but not limited to, personal telephone calls, mailings, referral of the delinquent account to a collection agency or filing judicial collection proceedings.

Section 7. Security Deposits

- 7-1. *Security Deposits Required.* A security deposit is required by each applicant selected for a rental unit tenant. The security deposit shall be paid under the terms of the lease agreement, but shall not exceed one month's rent. Each security deposit will be deposited in an account established by the Tribe's Accounting Department for this purpose.
- 7-2. *Limitations on Use of Security Deposit.* Security deposit funds may be used only to reimburse the landlord for actual damages not reasonably expected in the normal course of habitation and/or to pay the landlord for rent in arrearage, rent due for the premature termination of the rental agreement and for utility bills not paid by the tenant. Security deposits may not be applied toward the payment of rent or other charges while the tenant occupies the rental unit. The security deposit may not serve as the last month's rent.
- 7-3. *Reimbursement of Security Deposit.* Within sixty (60) days after a tenant vacates the rental unit, the Housing Department will forward the tenant an accounting of his security deposit

account, together with a check for the amount of the security deposit refund, if any, and, if applicable, an itemized bill for any amounts still due to the Tribe. The notice of damages must include the following statement in 12 point boldface type:

“YOU MUST RESPOND TO THIS NOTICE BY MAIL WITHIN SEVEN (7) DAYS AFTER RECEIPT OF THE SAME OTHERWISE YOU WILL FORFEIT THE AMOUNT CLAIMED FOR DAMAGES.”

If the Tribe fails to submit to the tenant the above list of as required by this Subsection, it is presumed that no damages are due and the Tribe shall refund the entire amount of the security deposit.

- 7.4. *Dispute of Charges.* Upon a tenant’s dispute of charges, the Tribe has ninety (90) days from the time the occupancy ended to file, in Tribal Court, a suit against the tenant in order to keep the disputed money to cover the alleged damages. The security deposit is considered the tenant’s property until the Tribe obtains a money judgment from the court for the disputed amount.

Failure of the Tribe to bring suit within the ninety (90) day term period above constitutes a waiver of all claimed damages, and the Tribe is liable for the full amount of the security deposit to the tenant.

Section 8. Charges to Tenants.

- 8-1. *Damages to Rental Unit.* Tenants will be required, at their own expense, to repair damages to rental homes if a Housing Department inspection finds that the damage appears to have been deliberate or could have been avoided. The Housing Department shall notify tenants in writing of any repairs it determines the tenant is responsible for, which includes a specific description of the item(s) to be repaired, the procedures for obtaining approval of repairs and the time period within which those repairs must be completed. If the tenant fails to properly complete the necessary repairs, or pay the cost of completing those repairs, the Housing Department may make arrangements to complete or pay the cost of those repairs and charge the tenant for the cost. The Director may allow tenants a period of time to complete repayment of repair costs, if warranted. If the tenant fails to pay repair costs properly charged, the Department may institute termination procedures as established in this Chapter.
- 8-2. *Other Charges.* Other charges, for example, the cost of towing junk cars, pet control and street light replacement, that may be incurred by tenants will be collected in the same manner described in Section 8-1 above.

Section 9. Automatic Payments and Payments in Advance

- 9-1. *Automatic Payments.* The Housing Department offers the option to receive automatic electronic payments. To that effect the Housing Department will cooperate with tenants to

make arrangements with a tenant's employer or other source of income for automatic rent payment, if allowable.

- 9-2. *Payments in Advance.* The Housing Department will accept advance payments for the entire period of the rent or for periods of time longer than one monthly period. The Accounting Department will issue the tenant a receipt stating the total amount received.

Section 10. Grievances.

- 10-1. *Right to Appeal.* If a tenant wishes to object to a final action or decision of the Director, the tenant may make an appeal as provided for in Section 6.03 of the Housing Commission Ordinance, Ordinance #04-700-01.
- 10-2. *Duty to Pay Rent while Appeal is Pending.* A tenant may not withhold rent or payment of other charges while the appeal is pending. If the appeal action refers to disputed rent or other charges, the tenant's payments will be kept in a separate account until the appeal is decided. If a tenant fails to pay rent or other charges while awaiting a decision on an appeal, the tenant will lose his the right to continue with the appeal. Late fees will continue to accrue as applicable during the pendency of any appeal.

Section 11. Illegal Drug Activities.

- 11-1. *Prohibition of Illegal Drug Activities.* As per Chapter 3, section 4, 4-5 (o), any conviction, including "no contest" pleas, for a drug related criminal activity shall be grounds for immediate termination of the lease agreement with that tenant. The Department is authorized to commence immediate proceedings to evict that tenant in accordance with this Chapter.

Section 12. Adoption; Amendment; Repeal

- 12-1. *Adoption.* This Chapter is approved by the Housing Commission by Resolution No. HC 11-0519-05 on May 19, 2011, and approved by the Tribal Council on June 15, 2011.
- 12-2. *Amendment.* This regulation may be amended by the Housing Commission in accordance with the *Administrative Procedures Act*, Ordinance #04-100-07. These regulations are amended by:
- a. Housing Commission Resolution #HC 16-0421-01, approved by Tribal Council Resolution #16-0727-213.
- 12-3. *Severability Clause.* If any provision of this regulation or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are severable.

- 12-4. *Compliance.* In regards to compliance with this regulation, substantial compliance with the ‘spirit’ of this regulation rather than complete compliance is acceptable.
- 12-5. *Sovereign Immunity.* Nothing in this Regulation shall be interpreted as a waiver of sovereign immunity from suit of the Tribe or any of its governmental officers and/or agents.
- 12-6. *Effective Date.* This Regulation shall take immediate effect on the date of approval by Tribal Council. Delinquent accounts with pending Notice(s) of Delinquency, Notice(s) of Termination or Tribal Court unlawful detainer proceedings shall proceed according to the regulations in place at the time the notice(s) were mailed or the proceedings were filed.