

Evictions: The Nuts and Bolts of Legal Requirements

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NWIHA Quarterly Meeting, October 2022

Due Process

- **Procedural requirements.** To get a court eviction order, the TDHE must first give the tenant certain procedural rights and opportunities. Failure to follow the requirements to the letter will result in the eviction case being dismissed by the court. Requirements include the following:
 - Advance written notice of reason for termination of lease (according to specific timelines set by law)
 - Service of notice by specified means to ensure it is received
 - Opportunity to correct the violations
 - Opportunity for a hearing to challenge the termination and eviction
 - Opportunity to review all records and documents related to the eviction
 - Right to have counsel or other representative (at their own expense)

Due Process

- Even after providing such notice, enforcing evictions requires filing an action in court.
- **No “self-help” evictions.** A fundamental principle of landlord-tenant law (tribal, state, and federal) is that the landlord may not use “self-help” to evict a family that is in non-compliance.
 - Landlords, including TDHEs, must rely on assistance of law enforcement personnel, and not forcibly evict a tenant themselves.

Due Process

- In this presentation, we are going to walk through the basic steps for eviction, from the initial violation, through the notices, and ending with the Court case.
- ***Each Tribe's law and policy is different, and you must look to your Tribe's specific law and policy for timing, notice and service requirements.***
- We will be speaking in general terms.

The Eviction Process – A Broad Outline

1. TDHE provides Notice to the tenant and the Notice period runs.
2. Informal resolution meetings.
3. After Notice period ends, TDHE attorney drafts and files a Complaint and associated documents.
4. Complaint and Summons are served on tenant.
5. Tenant can file an Answer to Complaint.
6. Court holds eviction hearing.
7. If eviction hearing is successful, TDHE asks court for writ of restitution.
8. Law enforcement can forcibly evict the tenant

Grounds for Evictions

- Tenants can be evicted for violations of TDHE policies, tribal code, or their rental agreement, or for “good cause”
- If cause is not found in rental agreement or tribal law, it is best to make it clear in early notices (before notice to quit) that the violation is being treated as good cause for eviction
- Violations should be clearly documented through reports and pictures that list:
 - Tenant name
 - Unit address
 - Date of inspection/incident
 - Describe/show the violations

Non-payment

- **Most common violation**
 - Tenant fails to pay rent or other payments owed to the Tribe or TDHE
 - Usually results in eviction when it is an ongoing situation – tenants usually not evicted for missing one payment
- **Document and record the following.**
 - Tenant ledger recording payments
 - Who receives payments at the Tribe/TDHE
 - How do they enter record of payment

Criminal Activity or Disturbance

- **Violation that often leads to expedited eviction**
 - Tenant or member of household engages in criminal activity
 - Or activity (loud parties, fighting) that disturbs neighbors
- **Document and record the following.**
 - Witness statements
 - Police reports
 - Video evidence (if any)
 - Staff observations?

Drug-related Criminal Activity

- **Raises unique issues of proof**
 - Has someone observed the behavior?
 - Is there an arrest or police report?
 - Is it based on drug-testing of unit?
 - Cannabis?
 - Legalized in state law but still criminal activity under federal law?
 - How do you handle this?

Drug-related Criminal Activity

- **Drug-testing as basis**
 - Do a “baseline” test at tenant move-in
 - Use a standard drug-testing kit
 - Clearly record the results in tenant file
- **Document and record the following.** Include this information in a report and in the Notice to Quit
 - Why TDHE decided to conduct a drug test on a particular unit.
 - Who conducted the test.
 - What methodology was used.
 - What the results were.
 - Where in the house the test was conducted.

Pre-Eviction Agreements

- **Agreements to remedy tenant's violations** (*entered into before a Notice to Quit is served on tenant or an eviction action is filed in court*):
 - **Last Chance Agreements:** agreements between the TDHE and tenants that give tenants one last chance to remedy any issues causing them to be in noncompliance with their rental agreement or the TDHE policies.
 - **Payback Agreements:** agreements between the TDHE and tenants that give the tenants the opportunity to pay back any overdue rent payments, maintenance fees, etc.

Notice to Quit

(Notice of Termination; Notice to Vacate)

- **Federal law protects right to due process.**
 - This requirement means that a tenant must be given notice and an opportunity for a hearing before they are evicted.
 - It is important to document the internal TDHE eviction process to show the court that tenants' rights and due process have been protected.

The Notice to Quit must:

- List the reasons for termination of rental agreement:
 - State the provisions of the rental agreement, TDHE polices, and/or tribal law that tenant has violated
 - Describe specific incidents/activities that are violations, including the date and details of each incident
 - Describe how tenant can remedy violations (except for criminal activity/drug activity)

The Notice to Quit must:

- Inform the tenant of:
 - An opportunity for informal resolution prior to termination of the rental agreement and eviction, if required by tribal code
 - Right to make a reply and have a hearing before the TDHE
 - Right to review records, documents, or regulations

The Notice to Quit must:

- Inform the tenant of:
 - How much time they have to come back into compliance or to vacate the unit
- **Timelines for providing notice (must look to Tribal Code and to Rental Agreement):**
 - **Three (3) days:** criminal activity or if the tenant causes serious injury to the property or other persons.
 - **14 to 30 days** for other kinds of violations.

The Notice to Quit must:

- **Be properly served on the tenant**
 - Look carefully at Tribal Code, Housing Policy and Rental Agreement
 - There are specific requirements for **HOW** the Notice must be served.
 - Personal service?
 - Posting on the rental unit?
 - Mailing?
 - Some combination?
 - ***Failure to serve the notice correctly will result in your eviction case being dismissed in Tribal Court***

Proof of Service

- **Affidavits of Service** – because proper service of the Notice to Quit is a key component of an eviction case:
 - We advise that you complete an affidavit of service explaining how, by whom, and when the service was carried out.
 - It should be notarized
 - This will be evidence in the eviction case. Notarization means it is a sworn statement that can be introduced as evidence.

Informal Resolution of Violations

- **Code requirements:** Some tribal codes require the TDHE to attempt an informal resolution before evicting a tenant.
- **Grievance policy:** TDHEs often have grievance policies providing tenants with a chance to bring a grievance about a TDHE action in front of the TDHE Board of Commissioners.
- **Documentation:** It is important to document the TDHEs efforts to set up an informal resolution, as evidence for the court that the TDHE has complied with the tribal code.

Other Remedies

- **Accepting Remedies.** It is up to the TDHE as to whether to accept remedies rather than going to court. It depends on the history of the tenant and severity of the violations.
- **Accepting Rent Payments.**
 - If a TDHE accepts a tenant's rent payments after serving tenant with a Notice to Quit, judges view that as an acknowledgement that the rental agreement violations have been cured.
 - Generally absent a specific Code provision to the contrary, we advise our clients **NOT** to accept payment after serving a tenant with a Notice to Quit, if the TDHE wants to proceed with an eviction.
- **Last Chance/Payback Agreements**—Any last chance/payback agreements at this stage restart the eviction process.

Complaint & Summons

- **Complaint should contain the following:**
 - Name of tenant(s) against whom the suit is brought;
 - A description or copy of the rental agreement;
 - Address or reasonable description of the location of the premises;
 - Grounds for eviction;
 - Statement showing that the notice to quit has been served in accordance with tribal code; and
 - Statement of the relief demanded, including any claim(s) for possession of the premises, damages, fees, costs, or other special relief.

Filing & Service Complaint & Summons

- **Filing.** File Complaint & Summons in court to begin an eviction action
- **Service.** Once the Complaint & Summons are filed, they must be served on the tenant

Method of Service

- As with the Notice to Quit, there are specific service requirements for the Complaint and Summons
 - Will be dictated by the Tribal Eviction Code
 - Failure to properly serve and to file proof of such service with the Court will result in dismissal of your eviction case.

Method of Service

- Some standard requirements
 - Must be served by a person over the age of 18 years who is competent to be a witness and is not a party to the action
 - **Personal Service.** Must be personally served on tenant or at the residence with some person of suitable age and discretion living there
 - **Alternative Service.** If personal service has been attempted but not completed, you may be able to serve the tenant by mail or by publication

Affidavit of Service

- **Proper Service is required.** A judge will throw out a TDHE's case if they do not strictly comply with the tribal code in serving the Complaint/Summons
- **File an affidavit of service** with the court for proof of service on the tenant.
 - The affidavit of service should state the time, place, and manner of service.
 - The affidavit of service must be notarized.

Stipulated Agreement

- **Stipulated Agreement and Order and Judgment of Eviction and Writ of Restitution.**
 - A settlement agreement between the TDHE and the tenant after an eviction action is filed but prior to the eviction hearing.
 - Should include the terms with which the tenant must comply.
- **Joint Motion to Enter Agreement Without Hearing:**
 - Requests that the court review and sign the Stipulated Agreement without a hearing.
- Must be **filed** in court, **signed** by judge, and **served** on tenant

Eviction Hearing

- **Eviction Hearing.** Judge will consider whether TDHE complied with tribal code & rental agreement:
 - If TDHE provided proper Notice
 - If Notice was properly served
 - Grounds for evictions
 - Tenant's defenses
- **TDHE Witness.** The TDHE attorney will call a TDHE staff member as witness during the hearing who will discuss the Rental Agreement/policy violations.

Eviction Hearings–Observations

- About half of tenants do not answer the complaint or, if they do, do not show up to court the day of hearing – resulting in default.
- Half of tenants appear at court – most of whom we are able to reach a stipulated judgment with (usually by offering an extra week or two to move). The court highly prefers stipulated judgments.
- Few, if any, tenants vacate once the complaints are filed in court.

After the Eviction Hearing

- **Writ of Restitution:** Evictions require court order.
 - Law enforcement will not remove a tenant without a Writ of Restitution. A Writ authorizes law enforcement to use force to remove tenants from premises from which they have been lawfully evicted.
 - If the Court grants a Writ of Restitution, the tenant must immediately vacate the premises.
- **Notice to Leave Premises.**
 - Some tribal codes require TDHEs to first give tenants three to five days to voluntarily vacate before law enforcement can forcibly evict the tenant.

Costs and Fees

- **Affidavit of attorney fees and costs.** If the court grants a Writ in favor of the TDHE, the TDHE must file an affidavit of attorney fees and damage cost estimate of repairs to the premises.
 - Usually must be filed within 90 days of the Writ.
- If the tenant opposes the request, the court will set a hearing. Otherwise, the court will just issue an order awarding costs to the TDHE

Eviction Takeaways

- Clearly document all violations
- TDHE must comply with tribal code & rental agreement:
 - Must provide tenant with proper Notice of violations
 - Must serve Notice on tenant
 - Must serve Complaint & Summons on tenant
- Any agreements or acceptance of rent after Notice to Quit is served restart the process

Thank You

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