

LAC DU FLAMBEAU CHIPPEWA HOUSING AUTHORITY

EVICITION PROCEDURES

The following steps are designed to assure that, when circumstances warrant, the CHA is able to evict tenants as efficiently and with as little delay as possible. The steps are intended to satisfy the requirements of Tribal Code § 80.315 for eviction upon summary proceedings.

1. **Serve "Notice of Intent to Terminate Lease and Demand for Possession."** Service of this document is important for three reasons: First, it represents the seven-day notice required under Tribal Code §§ 80.315(1)(a) and (b). Second, it satisfies the requirement of § 80.316 for a written demand for possession. Third, pursuant to § 80.317, it must be attached to the Complaint when the court action is filed.
2. **Serve "Termination of Lease."** This document should be served on the defendant as soon as the seven days have passed following service of the Notice of Intent to Terminate and Demand for Possession of Premises.
3. **Prepare Statement of Claim** (also called a "Complaint" under § 80.317). If the tenant refuses to vacate the unit, prepare plaintiff's Complaint. The Complaint is designed to satisfy the requirements at Tribal Code § 80.317. Paragraph 3 states the grounds for termination. Obviously, only the grounds that apply in the particular case should be included in the Complaint. The Notice of Intent to Terminate Lease and Demand for Possession should be attached as an Exhibit to the Complaint. The Complaint Claim should be signed by an authorized agent of the CHA. NOTE: A claim for a money judgment may be combined with a claim for eviction, as long as the amount of money sought is not more than \$5,000. See § 81.113. Combining the summary proceedings provisions of §§ 80.315-80.325 with the small claims procedures at Chapter 81 permits the CHA to seek a judgment of both eviction and money judgment, together with remedies such as attachment and garnishment. (Section 80.321 would appear to require the more cumbersome procedures of Part Two of Chapter Three but § 81.113 is more specific and should control this situation.)
4. **File Complaint** and ask for prompt court date. The filing fee is \$15 if only possession of the premises is sought and \$25 if a money judgment is also sought. Under § 80.318(1), the Clerk is responsible for serving a copy of the Complaint on the defendant, together with a Notice to Appear and Answer Before the Tribal Court. According to § 80.318(3), the date for the appearance of the defendant shall be within five days of the date of the Notice. Therefore, the sooner the court issues the Notice, the sooner the court-ordered eviction can occur. There is a conflict here. The eight days that a defendant has for a response under the small claims rules of chapter 81. So when both are combined, it would seem reasonable to use the eight-day notice.

5. **Attend the hearing.** The purpose of the hearing is to prove the facts set out in the Complaint. Therefore, an individual with knowledge of the facts should appear for the CHA ("CHA Litigator"). If there has been a health hazard or damage to the property, the person who inspected the premises should also appear.

- (a) Opening Statement. The CHA Litigator should make an opening statement stating the grounds for the eviction. After the initial short statement, the CHA Litigator should advise the court how he or she wishes to proceed. If the sole issue in the case is failure to pay rent, then, in all probability, there will be a single witness. If there are additional issues, such as destruction of property or health hazard, two witnesses may be required. In that event, the CHA Litigator would advise the court "Your Honor, I will testify that the records of the CHA reflect the defendant's failure to pay rent for a period of _____ months. Thereafter, [CHA witness] will testify regarding his inspection of the premises and the conditions he found when he made his inspection."
- (b) Presenting Evidence. Tribal Court proceedings are generally informal. I believe that it would be possible for the CHA Litigator to take the stand and testify regarding the records of the CHA and request that the relevant documents be introduced into evidence. Relevant documents might include inspection reports and notes of interviews with the tenant. If there is a printout of rental payments, showing nonpayment of rent, that could also be introduced into evidence. If a second witness, such as John Melzer, is needed to testify regarding health hazards or damage at the premises, then the CHA Litigator acts as the CHA attorney, asking the relevant questions. Again, the procedures are informal: "Mr. Melzer, did you inspect the premises at _____ . . .? On what date did you conduct your inspection . . .? Would you please tell the court what you found . . .".
- (c) Obtaining Judgment. Section 80.322 provides that "if the judge finds that the plaintiff is entitled to possession of the premises, judgment shall be entered in the judgment record in accordance with that finding, and may be enforced by a writ of restitution as provided herein. If it is found that the plaintiff is entitled to possession of the premises, due to nonpayment of any money due him under the tenancy, the judge shall determine the amount due or in arrears at the time of the hearing and shall cause it to be stated in the judgment. The statement in the judgment for possession shall only be for the purpose of prescribing the amount which, together with costs, shall be paid to preclude issuance of a writ of restitution." The Court should also rule on the CHA's claim for a money judgment, if one was made.

- (d) Money Damages. Assuming that the CHA has included in its complaint a request for a money judgment under Chapter 81, the judgment issued by the court should include judgment for the amount awarded. Since § 80.323(2) normally gives the Tenant ten days to meet the Court's condition before a writ of restitution is issued, the CHA will usually need to wait ten days before (1) getting a writ of restitution to complete the eviction, and (2) initiating a garnishment action to collect the money judgment.
- (e) Form of Judgment. For the Court's convenience, the CHA should provide a form of judgment for the judge to sign. If the CHA has asked for a money judgment then the amount of the money judgment should be included. If the judge is going to provide the tenant with some sort of "last chance" then the exact conditions that the tenant must meet should be set out in the judgment. For example: "In the event the full amount has not been paid within ten days, then, upon submission of an affidavit of nonpayment by the CHA, a writ of restitution shall issue."
- (f) Setting Follow-Up Hearing. In order to avoid delay in the event the tenant fails to vacate the premises, the CHA should, at the conclusion of the hearing, request a court date in ten days with the understanding that the CHA will inform the Court if the Tenant vacates the Premises or meets all of the Court's conditions. This is important. If the hearing ends without issuance of a writ of restitution, then the risk of dragging out the eviction increases. The Tenant should be on notice that the Court *will* issue the writ in ten days, solely upon submission of an affidavit by the CHA, unless all conditions are met.
6. **File Supplemental Affidavit/Obtain Writ of Restitution.** If the tenant does not vacate the premises voluntarily within ten days, then the CHA will have to return to Court to file a supplementary affidavit stating that the tenant has not complied with the judgment. Pursuant to § 80.323, the CHA is entitled to a Writ of Restitution. The Writ of Restitution is essentially an order to law enforcement personnel to remove the tenant. The filing fee is \$5.
7. **Garnish Tenant's Assets to Collect on Money Judgment.** Assuming that the CHA, in addition to the judgment of eviction, has also obtained a money judgment, the CHA can use the procedures at § 81.109 to file a claim against the Tribe or a subdivision to recover "wages or salary which may be owed by the Tribe or a subdivision thereof as an employee." No other types of garnishment are permitted. In the absence of a Tribal Council Resolution, garnishment of a per capita payment would not be permitted. Moreover, in view of the clear language of § 81.109, any authorization of garnishments of per capita should be in the form of an amendment to the Ordinance. Section 81.109 refers to the procedures of Wis. Stats. Ch. 812. In order to garnish wages, the CHA should file a garnishment complaint, together with a "Summons and Order form." A notice should be served on the defendant.

«h1name»

«h2addr1»

«h3addr2»

«h4addr3»

«h5phone»

February 10, 2006

«fname» «lname»

«street1»

«street2»

«CSZ»

REMINDER OF OVERDUE PAYMENT

Account: «ppus»

THIS IS TO NOTIFY YOU that the «h1name» has not yet received the rent payment for the dwelling unit located at: «unitstr1», «unitcity». The balance owed is \$ «totar». This amount does not include any security deposit balance you may still owe (see below)*. The «h1name» expects that this sum of \$ «totar» be paid by «duedate».

To avoid a "Notice of Delinquency," and further action, such as the termination of your lease, you may:

- (1) Pay the full sum above by «duedate»; or
- (2) Apply for an extension by «duedate»; or
- (3) Sign, and adhere to a repayment agreement.

You are asked to contact the CHA upon receipt of this letter so we can make the necessary arrangements to satisfy your account. If payment has been made, please disregard this reminder. Thank you.

Sincerely,

Representative of CHA

*Security Deposit Balance Due: \$_____

«h1name»
«h2addr1»
«h3addr2»
«h4addr3»
«h5phone»

February 10, 2006

«fname» «lname»
«street1»
«street2»
«CSZ»

NOTICE OF DELINQUENCY

Account: «ppus»

THIS IS TO NOTIFY YOU that your account is delinquent, and your lease to the dwelling unit located at «unitstr1», «unitcity», will be terminated, because rent and /or other charges for previous months in the amount of \$ «totar» have not been paid. In addition, you may owe a balance on your required security deposit ** (see below).

You have fourteen days in which to pay the amount in full, apply for an extension, or sign a re-payment agreement. If the CHA has not received a reply on this matter by «duedate», you will receive a "Notice of Intent to Terminate Lease." Following this, your lease will be terminated and, if necessary, legal proceedings will follow.

You are asked to contact me upon receipt of this letter so we can make necessary arrangements to satisfy your account. If your payment has been made in the meantime, please disregard this notice. Thank you.

Sincerely,

Representative of CHA

**Security Deposit Due: \$_____