

## Chapter 9. Landlord and Tenant

### Legislative History.

This provision was originally enacted by the Tribal Council on April 12, 1988, as Chapter 6 and the enacting Tribal Council Resolution was sent to the Agency Superintendent.

Prior to May 24, 1988, the Tribal Council learned of the decision of the Agency Superintendent to return Chapter 6, based on Constitutional considerations interpreted by the federal government, and thus hold that it was not legally enforceable. On May 31, 1988, the Tribe received the Superintendent's notice that he was returning Chapter 6 since it was not, as determined by the Agency, received by the Superintendent within 10 days of its enactment.

On June 14, 1988, the Tribal Council, through Ronald E. Johnny, Tribal Chairman, appealed the decision of the Agency Superintendent to the Area Director. On July 14, 1988, the Acting Area Director up-held the Agency's decision. On July 28, 1988, the Tribal Council, through the Tribal Chairman, appealed the decision to the Central Office (Washington, D.C.). The Central Office forwarded the matter to the Chief Administrative Law Judge, Board of Interior Appeals for the Department of the Interior.

In July 1988, the Interior Board of Indian Appeals (IBIA) ruled that the issue in this case was moot because the Tribal Council had re-enacted this chapter and had submitted the enacting Tribal Council Resolution to the Agency within 10 days. In dicta, however, the IBIA stated that tribal interpretation of their Constitution controlled; that the BIA lacked authority to render interpretations of tribal law. In response to the IBIA decision, the Tribe wrote a letter to the Superintendent, Western Nevada Agency, advising that they interpreted their Constitution has having no time limit on the Tribal Council to submit resolutions enacting laws to the Agency, however, the Tribe did interpret their Constitution as having a ten day time limit on the Agency and Secretary of the Interior to approve or disapprove the resolution and law within 10 days per the Constitution, Art. VI, Sec. 4. See *Fort McDermitt Paiute-Shoshone Tribe v. Acting Director, Phoenix Area Office, Bureau of Indian Affairs*, \_\_\_ IBIA \_\_\_ (July 1988), \_\_\_ I.L.R. \_\_\_.

### Sec. 1. Legislative Intent.

Tribal members, both young and old, have long suffered from the federal government's attempt to cure non-existent and sub-standard housing with negligently and shoddy constructed homes on this and other reservations.

The Tribal Council, as the governing body of the Fort McDermitt Tribe of Oregon & Nevada, adopts this chapter to ensure that housing participants, whether they be HUD or private, that have been victimized by negligent and shoddy constructions practices, not be treated unfairly during the enforcement of any HMO, lease, rental or purchase agreement.

The Tribal Council declares, from the date of the adoption of this chapter, that it will no longer tolerate shoddy and negligent design and construction practices.

The Tribal Council, during many public hearings, has listened to testimony from many tribal members regarding the bad construction practices, that installation of furnaces are neither energy efficient nor repairable given the fact that most furnaces and other equipment are out of production or parts not regionally available. The list of valid, documented complaints is too numerous to print here.

The Tribal Council, by enactment of this chapter, declares that victimization of tribal members with regard to bad housing construction practices stops in 1988.

Sec. 2. Applicability.

The following provisions, codified in this chapter, are applicable to every person and entity within the exterior boundaries of the Fort McDermitt Reservation, Hog John Ranch, and other lands of the reservation that may be added from time to time if the relationship of Landlord and Tenant is non-commercial in nature. These provisions will apply to the Housing Authority of the Fort McDermitt Indian Reservation presently known as the "Fort McDermitt Housing Authority". These provisions do not apply to those with whom the Fort McDermitt Development Corporation have business dealings with unless so stated.

Sec. 3. Breach of Peace Eviction Prohibited.

No landlord shall, from the date of this chapter is enacted, ever change locks, nail or otherwise attach boards or metal to windows and doors, or otherwise seal a residential unit without the permission of the Tribal Court.

Sec. 4. 10-Day Notice to Quit Required.

No eviction from a residential dwelling, unit or other residential structure shall occur unless a 10-day Notice to Quit is served upon the inhabitants of such structure.

Sec. 5. Requirements of Notice to Quit.

Any Notice to Quit served must state in capital, bold, type, that it is a "10-DAY NOTICE TO QUIT" prominently centered below the name of the landlord if such uses letterhead, otherwise centered three inches below the top of the page of a standard sheet of paper.

The Notice shall advise the occupants of the residential structure why a 0-Day Notice to Quit has been issued, e.g., failure to abide by terms of a lease, contract or other document, and shall state with specificity the provisions of the contract, lease or other document so breached, e.g., the document, page number, section, paragraph and subsection.

The Notice shall advise the occupants of alternatives that exist prior to the landlord seeking court enforcement of the notice to Quit by eviction, e.g., that the landlord is willing to enter into an alternative contract for the payment of any delinquencies not prohibited by the Statute of Limitations, etc.

Sec. 6. Judicial Enforcement of Notice to Quit.

Prior to ordering eviction, the Tribal Court will assist the landlord and tenant in exhausting all other methods and means of bringing the tenant into compliance with any contract, lease or other document controlling a residential structure's purchase, lease or rental, e.g., assisting the parties to come to a meeting of the minds on a contract to repay arrears and delinquent amounts no matter how small a reasonable small payment may be. Eviction shall be a means of last resort.

Sec. 7. Unemployment Statistics and Negative Economic Factors Not the Fault of the tenant to be Considered by the Court in Rendering its Decision.

The Tribal Court may consider seasonal and yearly periods of high unemployment and negative economic factors in rendering a decision as to a tenant's ability to meet their obligations to pay rent on a residential unit, make residential lease payments or make home purchase payments. This section shall not be interpreted to allow for interference with contractual obligations between any landlord and its funding source or any federal lending agency or any federal entity extending moneys. It merely states a belief of the Tribe's legislature that such factors should be considered by the Tribal Court prior to ordering an eviction.

Sec. 8. Eviction; When Prohibited.

No Tribal Court proceeding shall result in eviction during any month where the median temperature is normally below 40 degrees above zero for more than 15 days of the month.

Sec. 9. Action Against Landlord for Breach of Peace Eviction.

Any person who shall order or assist in ordering or physically attempt or do any act which constitutes a breach of the peace eviction, e.g., change locks on a residential structure, dwelling or unit; board or otherwise seal a residence with metal or wood; or knowingly circumvent the purpose of section 2 of this Chapter shall be deemed guilty of an offense and upon conviction, shall be punished by a minimum of 60 days labor for the benefit of the Tribe and shall pay, as liquidated damages to the tenant, a sum equal to three times that owed by the tenant to the landlord.

Sec. 10. Severability.

Should any sections of this chapter be disapproved by the Secretary of the Interior, in accordance with the Constitution, or be found unconstitutional or in violation of tribal or federal law by any court of competent jurisdiction, such declaration shall not affect the remaining terms or sentences of any section or the remaining sections of this chapter.