

EVICCTIONS

This page explains what an eviction is and how to go about evicting or removing a tenant and others from the leased premises.

WHAT IS AN EVICTION

An **eviction** is a legal process where a landlord (person renting out a home or other premises to another person called the tenant), either a private person, a corporation or a housing authority, attempts to remove a tenant (person renting a home) from the rental home or premises for violation of the lease or the landlord-tenant code. Normally a landlord will attempt to evict a tenant for nonpayment of rent, damage to the rental home/premises or some other lease violation.

A landlord cannot forcibly remove a tenant without a court order for eviction. A landlord who evicts or removes a tenant without a court order can be held liable for a wrongful eviction. This brochure will explain the process a landlord must follow in order to legally evict a tenant from a dwelling or house on the reservation.

WHAT LAW APPLIES TO EVICTIONS ON THE RESERVATION

Rosebud Sioux Tribe Landlord-Tenant Code applies to all Landlord-Tenant relationships and disputes on the reservation. This would include any written or oral agreement to lease a dwelling (house) or other premises located on the reservation.

WHO HAS JURISDICTION OVER LANDLORD-TENANT DISPUTES ON THE RESERVATION

Rosebud Sioux Tribal Court has jurisdiction over all buildings, lands and dwellings on the reservation land (including all of Todd County and trust land of the Rosebud Sioux Tribe located outside of Todd County). The court also has jurisdiction over all persons and entities that rent dwellings on the reservation. This would include all Indians and non-Indians who rent dwellings on the reservation.

WHAT ARE THE LANDLORDS RIGHTS

The Rosebud Sioux Tribe Landlord-Tenant Code gives Landlords the following rights:

- To be paid rent within 30 days of the due date.
- Adopt reasonable rules for the use and occupancy of the premises that provides for the health and safety of occupants and the peace and quiet enjoyment of other tenants.
- Access to the premises to make repairs and maintain the premises at reasonable times when the tenant is present and after reasonable notice of at least 24 hours is given to the tenant.
- Require the tenant to comply with regulations for health and safety, to keep the premises clean and safe, to dispose of all trash and to conduct themselves and their guests in a way

that will not disturb others.

WHAT ARE THE LANDLORDS OBLIGATIONS

The code imposes the following obligations on landlords:

- Maintain the dwelling in a habitable (liveable) condition.
- Guarantee the quiet enjoyment of the dwelling to the tenant and to ensure that other tenants do not cause a nuisance, endanger public health and safety, or breach the peace.
- Comply with applicable building or housing codes.
- Make necessary repairs to the premises within a reasonable time after written request is received from the tenant except those that are the responsibility of the tenant.
- Keep dwellings and common areas not assigned to a specific tenant in a safe and clean condition.
- Provide running water, hot water and heat that is appropriate for the season.

WHAT ARE THE TENANTS RIGHTS

The code gives tenants the following rights:

- Quiet enjoyment of the premises.
- Apply to Tribal court to enforce their rights under the code.
- All notices required by the code for any action take by the landlord that is adverse to the tenant.
- Refund of any deposit.

WHAT ARE THE TENANTS OBLIGATIONS

The code imposes the following obligations on tenants:

- To pay rent and to pay for any damages to premises beyond ordinary wear and tear.
- Respect the rights of Landlords and comply with any rental agreement with landlord.
- Maintain the premises in a safe and clean condition and to ensure that they and their guests do not disturb the quiet enjoyment of others or cause a breach of the peace.
- Refrain from illegal conduct or activities that may harm the premises.

WHAT ARE THE GROUND FOR AN EVICTION

Under the code a landlord can evict a tenant from a premises or dwelling for the following reasons:

- Nonpayment of rent
- Nuisance, property damage or destruction; injuries to property, person or the peace of other tenants.
- Abandonment of the premises for more than 30 days.

- Noncompliance with the code.
- Occupying the premises without permission or agreement.
- Violation of the lease agreement.

WHAT STEPS MUST A LANDLORD COMPLY WITH BEFORE A TENANT CAN BE EVICTED FROM A PREMISES

A landlord may not evict a tenant without a court order. This means that the landlord must comply with the steps for eviction set out in the RST Landlord-Tenant Code. Failure to do so can lead to the dismissal of an eviction action and may also subject the Landlord to civil liability. The first step is for the Landlord to give tenant Notice to Quit the premises. If the tenant fails to comply with the notice to quit, the second step is for the landlord to file a suit for eviction in tribal court. The court will then after a hearing either order the tenant evicted or will dismiss the action if it finds no grounds for eviction. These steps are set out below.

A landlord cannot change a tenant's locks, remove their property or forcibly remove a tenant for a violation of a lease agreement. A landlord must follow the Landlord Tenant Code and follow these steps.

WHAT IS THE FIRST STEP IN THE EVICTION PROCESS

The code requires a landlord to have a Notice to Quit personally served upon the tenant(s) before the landlord can file an action for eviction in tribal court. This notice tells the tenant(s) that they are in violation of the lease agreement and are required to vacate the premises and that failure to do so within a period of time will result in the landlord filing for eviction in tribal court.

A Notice to Quit must be personally served on the tenant(s) by a police officer, process server or a tribal member over the age 18 years old and who is not a party to the eviction action. The person serving the Notice to Quit must sign a proof of personal service on the tenant by signing an affidavit that the server of the notice served the notice personally on the tenant.

Under the code the landlord is required to serve the Notice to Quit on the tenant(s):

- Fourteen (14) days prior to filing for eviction for failure to pay rent.
- Three (3) days prior to filing for eviction for a nuisance, serious injury to property or persons.
- Thirty (30) days prior to eviction in all other situations.

If a tenant receives a Notice to Quit, they can either vacate the premises within the time contained in the notice or they can disregard the notice. If the tenant disregards the notice, they cannot be forcibly removed but the landlord can file a complaint for eviction in tribal court after the notice to quit time has expired.

WHAT IS THE SECOND STEP IN THE EVICTION PROCESS

Once the Notice to Quit has been served on tenant(s) and the time has elapsed for tenant(s) to vacate the premises and the tenant(s) has failed to vacate, the landlord can file a summons and complaint in tribal court for eviction, for payment back rent or payment for damages to the premises.

The court can either evict the tenant and award the landlord back rent, damages to the premises and for costs of bringing the action or the court can dismiss the action for eviction if it finds for the tenant(s).

WHAT HAPPENS IF DEFENDANT FILES A COUNTERCLAIM WITH THEIR ANSWER.

This section explains what to do if you receive a counterclaim (any claims the tenant has against the landlord related to the rental of the property) in the defendant's answer. You should read defendant's answer carefully. It will tell you what parts of your complaint the defendant admits and what parts defendant denies. The answer will tell you if the defendant is filing a counterclaim against you. If the answer contains a counterclaim you must reply to the counterclaim. As a result you must file a Reply with the court and a copy to the plaintiff within fifteen (15) days of service of the counterclaim on you or you are in default to defendant's counterclaim. If you receive an Answer from the defendant and it contains a counterclaim you must reply to defendant's counterclaim within 15 days of service of the counterclaim upon you or you are in default.

What is a Reply. A Reply is your answer to the defendant's counterclaim. This means you must admit or deny each of the defendant's allegations in the counterclaim. If you have any affirmative defenses to plaintiff(s) complaint you must specifically plead these affirmative defenses in your answer. If you fail to raise any affirmative defenses you may have you will be barred from using such a defense. This means that if you fail to raise an affirmative defense you waive the right to use such a defense. Affirmative defenses include accord and satisfaction (meaning you already settled this matter with the opposing party), arbitration and award (meaning an independent arbitrator already decided the case before the court did) assumption of the risk, contributory negligence, discharge in bankruptcy, duress (you were forced or threatened to do something you did not want to do), estoppel (meaning the other party can complain against their own actions), failure of consideration, fraud, injury by fellow servant, illegality, laches (meaning the other party waited too long to bring the action), license, payment, release (meaning the other party released you from any obligation), res judicata (meaning the court has already heard and decided the matter in an earlier case involving the same thing as this case), statute of frauds, statute of limitations (meaning the other party did not bring the action in the time set out in the code) and waiver (meaning the other party waived any claim they had). You must prove any affirmative defenses you raise in your Reply by a preponderance of the evidence at trial.

What happens if you fail to Reply to defendant's counterclaim within time period prescribed by law? If you fail to Reply to defendant's counterclaim within fifteen (15) days of service of the counterclaim upon you, you are in default and the defendant may seek a default judgment against you on their counterclaim. This means that if you fail to reply to the

defendant's counterclaim the defendant may be awarded what they ask for in their counterclaim and you cannot object or present your side of the issue. **Warning.** You must reply to defendant's counterclaim within a specified period of time. If you fail to do so a default judgment could be entered against you.

How to file a reply. You must file a Reply to the defendant's Answer and Counterclaim by filing the original with the court and by mailing a copy to the plaintiff if they are not represented by legal counsel or to their attorney if the plaintiff is represented.

LANDLORD'S BURDEN OF PROOF. If the party who files a complaint has the burden of proving the claims in the complaint in court. In a typical civil case the party who brings the claim has the burden of proving their claim by a preponderance of the evidence. This means that it is the other party's responsibility to prove their case. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s). The landlord or plaintiff has the burden of proving by a preponderance of the evidence the following to the court:

1. Each and every allegation and fact alleged in their complaint.
2. That there is a landlord-tenant relationship between you and the landlord. The landlord can prove this by showing an oral or written rental agreement between you and them where you agreed to rent a premises from the landlord for rent (usually monthly rent payable at the beginning of each month). The landlord will need to submit a copy of the lease into evidence.
3. That the tenant violated a term or condition of the rental agreement. This would include failure to pay rent or to repair damages to the premises or for violation of any other term of the rental agreement. If the rental agreement was oral or written look to the tribal Landlord-Tenant code to see any rights and duties you have under the code as a landlord. The landlord will be required to submit evidence that the lease was violated. Some examples would be through witnesses, documents, photos and other evidence.
4. Typically, a landlord is required to show and prove that they gave proper notice to quit the premises before the landlord can file an action for eviction in tribal court. If the landlord has failed to give proper notice to quit or vacate then the tribal court does not have jurisdiction to hear the eviction case and cannot proceed to evict. The landlord will need to submit the original notice to quit and proof of service into evidence.

WHAT DO I DO WHEN I GO TO COURT FOR A TRIAL

The party bringing any claim or counterclaim has the burden of proving their claim or counterclaim by a preponderance of the evidence. The plaintiff or petitioner (the party who brings the first claim to court) presents their evidence first and then defendant or respondent presents their evidence to the court.

How to present your Evidence to the Court. There are several ways of presenting your

evidence and case in court. The best way is through live testimony of witnesses. This would include you (you need to testify to your claim) and any other person who has personal and relevant knowledge of the facts of your claim. It is your responsibility to get your witnesses to court and to ask them questions about their knowledge of the facts. In order to compel or force your witnesses to testify at your trial or hearing you may need to subpoena each of your witnesses well before the trial or hearing or hearing date (Use the **Motion to Subpoena Witnesses** form to request the court to issue a subpoena to compel a witness to appear at your trial or hearing if they won't voluntarily appear). You can also subpoena a person or witnesses to bring evidence such as documents to your hearing or trial (Use the **Motion to Subpoena a Person to Bring Evidence to Court** form to request the court to issue a subpoena to compel a person to appear at your trial or hearing and bring specified evidence with them if they won't voluntarily appear). Once you and your witnesses testify the opposing party can cross examine you and your witness. This means that they can ask you and your witnesses questions.

It will be your responsibility to directly ask questions (direct examination) of your witnesses and to get your evidence introduced into the record. You can only ask questions during direct examination. Do not attempt to make statements or comments when you ask questioning witnesses. Your witnesses should be asked who they are, what they know and how they know it or anything they might have observed. Like cross examination you should prepare your questions for each of your witnesses well before the trial and take notes of any strong points testified to that you can use in your closing arguments to the Court.

It will also be your responsibility to get objects and other physical evidence, such as documents, introduced into the record. You do this by laying the foundation for the admissibility of the evidence by questioning the person you subpoenaed to bring the objects or pieces of evidence you want introduced into evidence. Ask the Court to mark the evidence as an Exhibit. Then you must ask this person who they are, what objects or pieces of evidence they brought to the Court, a description of the objects or pieces of evidence, how the evidence came into that persons possession and if the evidence are documents then you must ask if the documents are kept in the ordinary course of business. Then you must ask the Court to have the evidence introduced and accepted as evidence. Only evidence accepted by the Court after it is ruled admissible will be seen or considered by the Court.

You must cross examine the opposing party's witnesses to cast doubt on the opposing party's claims, counterclaims or defenses. Cross examination is your chance to ask questions of the opposing party's witnesses. You can only ask questions of the opposing party's witnesses during cross examination. Do not attempt to make statements or to testify during cross examination of another witness, the Court will shut you off from doing so.

Be courteous in Court. When you go to court the judge will control the proceedings. The plaintiff presents their case first. Then the defendant presents their side of the case. Do not interrupt the other side when they are testifying unless you have an objection. Both sides will have an opportunity to cross examine the other party and their witnesses. Be courteous to the other side. If you disrupt the proceedings the judge could hold you in contempt and throw you in jail.