

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBAL COURT

Little Traverse Bay Bands of
Odawa Indians Housing Department

v

Floyd John Harrington, Sr.
_____ /

William Gregory
Tribal Prosecutor
7500 Odawa Circle
Harbor Springs, MI 49740

Case No. LT-003-1207
Hon. Jenny Lee Kronk

Aaron Allen
Attorney for the Defendant
814 South Garfield Avenue, Suite A
Traverse City, MI 49686

OPINION AND ORDER

On December 21, 2007, the Little Traverse Bay Bands (LTBB) of Odawa Indians Prosecuting Attorney, William Gregory, filed a complaint for termination of the tenancy of Floyd John Harrington, Sr. in tribal elder housing arising out of a February 2007 lease agreement between Mr. Harrington and the LTBB Housing Department. The complaint alleged that the tenancy had been terminated by a notice to quit. A hearing was held in this matter on February 26, 2008, the Honorable Jenny Lee Kronk, LTBB Associate Judge presiding. Present at the hearing were the Defendant, Mr. Harrington, and his attorney, Mr. Aaron Allen, Mr. Gregory, Mr. John Givens, LTBB Housing Director, Mrs. Stephanie Howell, LTBB Housing Department Programs Coordinator, and Sergeant Michael Givens, LTBB Law Enforcement Officer.

Findings of Fact

Housing Director John Givens testified that beginning in February 2007, Mr. Harrington had been a tenant in an elder duplex built by the Rural Housing Service. See, Lease Agreement (Exhibit #2). Mr. Harrington's subsidized monthly rent was \$69. A security deposit of \$200 was required, of which \$69 had been paid. The February 2008 rent payment due on February 1 had not yet been paid. Director Givens said that the Department had served an eviction notice¹ on Mr. Harrington for allowing two persons to live with him (and not notifying the Housing Department within seven days of the occupancy change) and for complaints of disturbances at the residence. Director Givens

¹ The eviction notice was not entered into the record.

indicated that failure to report additional household income or occupants of the residence could jeopardize the Tribe's elder subsidized rural loan agreement with the federal government.

Programs Coordinator Howell testified that she had sent several letters² to Mr. Harrington indicating that he was required to report any new persons living with him and drawing his attention to federal guidelines that governed his lease with the Tribe. Mrs. Howell further testified that the recertification to stay in tribal housing beyond the termination of the lease that ended on January 31, 2008, had not been done because an eviction notice halts the recertification process.

Sgt. Givens reported that there had been several calls to Tribal Police from the Harrington residence. On one occasion, Mr. Harrington admitted that someone had been living with him. On another occasion, Mr. Harrington asked tribal police to remove his nephew from the premises but allowed the nephew's friend and her daughter to stay. Sgt. Givens presented a LEIN document that showed that on 07/30/2007 a vehicle was registered in the name of Willard Sylvester Rhymes at Mr. Harrington's tribal housing address, 5754 Ap-Gish-Mok Boulevard, Harbor Springs, Michigan. See, Exhibit #1.

The testimonial evidence presented by the Tribe's witnesses was not contradicted.

Conclusions of Law

Paragraph 3 of Mr. Harrington and the Tribe's Lease Agreement states that Floyd J. Harrington, Sr., is the only individual who was allowed to occupy the premises. See, Exhibit #2, p. 2.

However, Willard Sylvester Rhymes recorded Mr. Harrington's address as Mr. Rhymes' address with the Michigan Department of State. See, Exhibit #1.

Therefore, the Tribal Housing Department, according to the lease agreement, was justified in considering Mr. Rhymes an unauthorized occupant of Mr. Harrington's rental unit.³

² The letters were not entered into the record.

³*Pursuant to 7 CFR 3560.156 (c) (8) a person who visits or stays in the apartment on a regular or repeated basis will be considered an unauthorized occupant of the rental unit. It is agreed the landlord reserves the right to request a recorded declaration of domicile or proof of domicile if it is suspected that a guest is an unauthorized household occupant, under said rules. Should the Resident or person in question not provide the requested information needed to confirm other domicile, **or should the facts be sufficient to evidence domicile in the community, then the management may at its option, enforce any lease covenants broken and/or require recertification or termination of tenancy for material noncompliance with this Lease.** If a person receives mail at the premises, keeps clothing or other personal property in the premises, **records the premises address as the persons address**, parks a vehicle registered to that person on the property on a regular basis, uses the address for police or court matters, and or stays in the apartment on a regular basis **management will consider this person as an occupant of the unit.** This list is not inclusive and other factors will be considered by Landlord in arriving at this decision. **(Emphasis added).** See, Exhibit 2, p. 2.

Paragraph 8 of the Lease Agreement required Mr. Harrington to request a recertification of income and/or household composition when he allowed someone to live with him and/or when Mr. Rhymes began to use his address.⁴

Finally, Paragraph 41 of the Lease Agreement, p. 11, allowed the LTBB Housing Department to terminate or refuse to renew the tenant's lease for material non-compliance with the lease provisions or occupancy rules, or non-payment of rent.⁵ Mr. Harrington was in material non-compliance of the occupancy rules by allowing others to live with him and/or use his address. Mr. Harrington was in further material non-compliance with the lease provisions by not requesting a recertification of monthly income or number of persons allowed to be living in the unit after allowing other persons to live with him and by not requesting an annual recertification no later than 60 days before the expiration of the lease on January 31, 2008.

⁴RECERTIFICATION OF INCOME AND/OR HOUSEHOLD COMPOSITION: Resident agrees to fulfill the income verification process and certification requirements established under 7 CFR 3560.152. **The initial tenant certification is effective for 12 months unless there is a change in Resident's household income of \$100 or more per month, or the number of persons living in the unit in which event a new certification is required immediately.** Landlord must recertify Resident if Resident requests a recertification if the household income has changed by \$50 or more per month. Resident agrees to timely (within seven days) provide all information necessary for recertification of income. **Any change in household composition must be reported to Landlord for approval and must be completed prior to any approval for change in occupancy.** If there are no changes requiring an interim recertification, Resident must begin the annual recertification process not later than sixty (60) days prior to the expiration date of his or her current certification and complete the recertification process 30 days before the current tenant certification expires or Resident may lose benefits and be responsible for payment of market rent. **Residents who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subjected to unauthorized assistance claims by the Agency. (Emphasis Added).**

⁵TERMINATION OF TENANCY: 7 CFR 3560.159 provides for termination of tenancy as follows:

- (a) Tenants in violation of the lease. **Landlord, in accordance with the lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes.** Prior to terminating the lease, the Landlord must give the tenant written notice of the violation and give the Tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.
 - (1) **Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a Landlord, includes actions such as: (i) violations of lease provisions or occupancy rules that are substantial and or repeated; (ii) non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; . . . (Emphasis Added).**

For all of the above reasons, the Court finds that the one-year Lease Agreement between the LTBB Housing Department and Mr. Harrington has expired by operation of law and Mr. Harrington has no rights of further occupancy based upon his material non-compliance with the lease provisions of the expired lease agreement and failure to pay rent. By failing to comply with tenant recertification requirements, Mr. Harrington is no longer eligible for occupancy under federal regulations. See, 7 CFR 3560.152.

Although the Court is sympathetic to the situation this tribal elder is now in, it cannot disregard the Tribe's obligations to enforce occupancy and income rules promulgated by the U. S. Department of Agriculture/Rural Housing Service. To do so would jeopardize its entire housing development and the affordable housing it provides for all the other elders residing in the Wah-Wahs-Noo Da Ke Elder Housing Development.

Therefore, it is ORDERED that:

- Floyd John Harrington, Sr., must vacate the Little Traverse Bay Bands of Odawa Indians Tribal Elder Housing Duplex located at 5754 Ap-Gish-Mok Boulevard, in Harbor Springs, Michigan, as soon as reasonably possible, but in no case later than 30 days beyond receipt of this order.
- Mr. Harrington must pay to the housing office at least seventy-nine dollars (\$79.00) for the February rent and late fee and any future rental fees accrued for holding over beyond February 29, 2008.

Feb. 29, 2008
February 29, 2008

Honorable Jenny Lee Kronk, LTBB Associate Judge

