



Legislation Text

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AN ACT RELATING TO TECHNICAL AMENDMENTS TO THE CHEROKEE NATION RESIDENTIAL LANDLORD AND TENANT ACT

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This Act shall be known as the "Technical Amendments to the Cherokee Nation Residential Landlord and Tenant Act of 2017" amending Sections 101 and 104 of the Cherokee Nation Residential Landlord Tenant Act, LA 17-91, currently codified at Title 41 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to amend substantive provisions of the Cherokee Nation Residential Landlord and Tenant Act to clarify its applicability to Mutual Help and Occupancy Agreements (MHO), and other long-term housing rental agreements, executed by the Cherokee Nation Housing Authority.

Section 3. Legislative History

Legislative Act 17-91

Section 4. Substantive Provisions of Law

Title 41 of the Cherokee Nation Code Annotated is hereby amended as follows:

CHAPTER 2 RESIDENTIAL LANDLORD AND TENANT ACT

§ 100. Short title

This act shall be known and may be cited as the Residential Landlord and Tenant Act of Cherokee Nation.

§ 101. Definitions

Save for any differences in the context of this act the following definitions shall be used:

1. **"Building and housing codes"** includes any law, ordinance or Cherokee Nation governmental regulation concerning the fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit that is erected on any property over which Cherokee Nation maintains and exerts jurisdiction.

2. **"C.F.R."** means the Code of Federal Regulations.

3. **"Deposit"** includes any money or other property required by a landlord from a tenant as and for security and which is to be returned to the tenant upon termination of the rental agreement, less any deductions properly made and allowed by this act or any law, rule, or regulation of the United States of America promulgated to effectuate the Mutual Help Homeownership Program, Low-Income Rental Program or any other low-income housing program administered by the Housing Authority of Cherokee Nation and the Housing Authority of the Delaware Tribe of Indians.

4. **"Dwelling unit"** means a structure, or that part of a structure, which is used as a home, residence or sleeping place by

one or more persons.

5. **"Good faith"** means honesty in fact in the conduct of the transaction concerned.

6. **"Home buyer"** means the person(s) who has executed an MHO Agreement with the IHA or an MHO Agreement for another home in the project (as indicated by the context of the agreement), and who has not yet achieved homeownership.

7. **"Indian Housing Authority" or "IHA"** means the Housing Authority of Cherokee Nation or the Housing Authority of the Delaware Tribe of Indians.

8. **"Landlord"** means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to comply with the disclosure provisions of 41 CNCA § 113 including Cherokee Nation, the Housing Authority of Cherokee Nation and the Housing Authority of the Delaware Tribe of Indians.

~~9. **"MHO"** means a mutual help and occupancy agreement between the Indian Housing Authority and the home buyer.~~

9. **"MHO"** means a Mutual Help and Occupancy agreement executed by an Indian housing authority created pursuant to Okla. Stat. tit. 63 § 1057.

10. **"Organization"** includes a corporation or any governmental subdivision, any agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest and any other legal or commercial entity.

11. **"Owner"** means one or more persons, jointly or severally, in whom is vested:

- a. all or any part of the legal title to the property, or
- b. all or part of the beneficial ownership and a right to present use and enjoyment of the property, and such term includes a mortgagee in possession.

12. **"Person"** includes both individuals and organizations.

13. **"Premises"** means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas and facilities held out for the use of the tenant generally or use of which is promised to the tenant.

14. **"Rent"** means all payments, except deposits and damages, to be made to the landlord under the rental agreement including required monthly payments under a mutual help and occupancy (MHO) agreement.

~~15. **"Rental agreement"** means all agreements, including a mutual help and occupancy agreement, and valid rules and regulations adopted under 41 CNCA § 126, which establish, embody or modify the terms and conditions concerning the use and occupancy of a dwelling unit and premises. All mutual help occupancy agreements executed between the Housing Authority of Cherokee Nation or Delaware Tribe of Indians and home buyers participating in the Mutual Help Homeownership Opportunity Program shall be considered rental agreements and not mortgages, contracts for deed, or any other instrument purporting to confer homeownership rights either at law or in equity.~~

15. **"Rental agreement"** means all agreements, including a mutual help and occupancy (MHO), Rural Rental Housing, New Construction Homeownership Program, or any other similar long-term housing rental program, and valid rules and regulations adopted under 41 CNCA § 126, which establish, embody or modify the terms and conditions concerning the use and occupancy of a

dwelling unit and premises.

16. **"Roomer"** or **"boarder"** is a tenant occupying a dwelling unit which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator or stove, in a building:

- a. where one or more of such major facilities are supplied to be used in common by the occupants of the roomer or boarder's dwelling unit and one or more other dwelling units, and
- b. in which the landlord resides.

17. **"Single-family residence"** means a structure used and maintained as a single dwelling unit. A dwelling unit, including those with common walls, shall be deemed a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

18. **"Tenant"** means any person entitled under a rental agreement to occupy a dwelling unit.

~~§ 102. Rights, obligations and remedies-Enforcement~~

~~A. Any right, obligation or remedy declared by this act is enforceable exclusively in Cherokee Nation District Court and may be prosecuted as part of an action for forcible entry or detainer unless the provision declaring it specifies a different and limited effect. In any action for breach of a rental agreement or mutual help occupancy agreement or to enforce any right or obligation provided for in the rental agreement or MHO agreement as provided in this act as—~~

§ 102. Rights, obligations and remedies-Enforcement

A. Any right, obligation or remedy declared by this act is enforceable exclusively in the Cherokee Nation District Court and may be prosecuted as part of an action for forcible entry or detainer unless the provision declaring it specifies a different and limited effect. In any action for breach of a rental agreement or mutual help occupancy agreement or to enforce any right or obligation provided for in the rental agreement or MHO agreement as provided in this act, the prevailing party shall be entitled to reasonable attorney fees.

B. Actions brought under this act by Cherokee Nation, Housing Authority of Cherokee Nation or Delaware Tribe of Indians may be prosecuted by a staff member or attorney.

§ 103. Application

A. Except as otherwise provided in this act, this act applies to, regulates and determines rights, obligations and remedies under a rental agreement for a dwelling unit located within any area over which Cherokee Nation exercises jurisdiction.

B. Any agreement, whether written or oral, shall be unenforceable insofar as that agreement, or any provision thereof, conflicts with any provision of this act.

~~§ 104. Reserved~~

§ 104. Mutual help and occupancy agreements and other long-term housing rental agreements not to be construed as mortgages or contracts for deed - Under the provisions of this act, no mutual help and occupancy agreement (MHO), Rural Rental Housing, New Construction Homeownership Program, nor any regulations adopted under 41 CNCA § 126 which establish, embody or modify the terms and conditions concerning the use and occupancy of a dwelling unit and premises, or any other similar long-term housing rental program executed by an Indian housing authority created pursuant to Section 1057 of Title 63 of the Oklahoma Statutes, shall be considered a mortgage or contract for deed.

§ 105. Mitigation of damages

An aggrieved party under the provisions of this act has a duty to mitigate damages.

§ 106. Settlement of claim

A claim or right arising under this act or rental agreement, if disputed in good faith, may be settled by agreement and requires no further consideration.

§ 107. Good faith performance or enforcement

Every duty under this act and every act which must be performed as a condition precedent to the exercise of a right or remedy under this act imposes an obligation of good faith in its performance or enforcement.

§ 108. Beneficial owner to maintain premises

Any agreement, assignment, conveyance, trust deed or security instrument which authorizes a person other than the beneficial owner to act as a landlord of a dwelling unit shall not relieve the beneficial owner of the duty to conform with this act and any other law, code, ordinance or regulation concerning the maintenance and operation of the premises.

§ 109. Rent

A. In the absence of agreement, the occupants of a dwelling unit shall pay to the landlord as rent the fair rental value for the use and occupancy of the dwelling unit.

B. Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the dwelling unit at the beginning of any term of one (1) month or less, while one (1) month's rent shall be payable at the beginning of each month of a longer term.

§ 110. Term of tenancy

Unless the rental agreement fixes a definite term in writing, the tenancy is week-to-week in the case of a roomer or boarder who pays weekly rent, and in all other cases month-to-month.

§ 111. Termination of tenancy

A. Except as otherwise provided in the Residential Landlord and Tenant Act of Cherokee Nation, when the tenancy is month-to-month or a tenancy at will, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives a written notice to the other at least thirty (30) days before the date upon which the termination is to become effective. The thirty-day period to terminate shall begin to run from the date notice to terminate is served as provided in subsection (E) of this section.

B. Except as otherwise provided in the Residential Landlord and Tenant Act of Cherokee Nation, when the tenancy is less than month-to-month, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives to the other a written notice served as provided in subsection (E) of this section at least seven (7) days before the date upon which the termination is to become effective.

C. Unless earlier terminated under the provisions of the Residential Landlord and Tenant Act of Cherokee Nation or unless otherwise agreed upon, a tenancy for a definite term expires on the ending date thereof without notice.

D. If the tenant remains in possession without the landlord's consent after the expiration of the term of the rental agreement or its termination under the Residential Landlord and Tenant Act of Cherokee Nation, the landlord may immediately bring an action for possession and damages. If the tenant's holdover is willful and not in good faith, the landlord may also recover an amount not more than twice the average monthly rental, computed and prorated on a daily basis, for each month or portion thereof that said tenant remains in possession. If the landlord consents to the tenant's continued occupancy, a month-to-month tenancy is thus created, unless the parties otherwise agree.

E. The written notice, required by the Residential Landlord and Tenant Act of Cherokee Nation, to terminate any tenancy shall be served on the tenant or landlord personally unless otherwise specified by law. If the tenant cannot be located, service shall be made by delivering the notice to any family member of such tenant over the age of twelve (12) years residing with the tenant. If service cannot be made on the tenant personally or on such family member, notice shall be posted at a conspicuous place on the dwelling unit of the tenant. If the notice is posted, a copy of such notice shall be mailed to the landlord by certified mail.

§ 112. Duties of parties upon termination of tenancy

Except as otherwise provided in this act, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and be determined upon the effective date of said termination, and the parties shall thereupon discharge any remaining obligations under this act as soon as practicable.

§ 113. Rental agreements

A. A rental agreement may not provide that either party thereto:

1. agrees to waive or forego rights or remedies under this act;
2. authorizes any person to confess judgment on a claim arising out of the rental agreement;
3. agrees to pay the other party's attorney fees;
4. agrees to the exculpation, limitation or indemnification of any liability arising under law for damages or injuries to persons or property caused by or resulting from the acts or omissions of either party, their agents, servants or employees in the operation or maintenance of the dwelling unit or the premises of which it is a part;

5. agrees to the establishment of a lien except as allowed by this act in and to the property of the other party.
- B. A provision prohibited by subsection (A) of this section and included in a rental agreement is unenforceable.
- C. Any prohibition provided by subsection (A) shall be superseded by MHO provisions mandated by federal law.

§ 113.1. Denial or termination of tenancy because of guide, signal or service dog

A landlord shall not deny or terminate a tenancy to a blind, deaf, or physically handicapped person because of the guide, signal, or service dog of such person unless such dogs are specifically prohibited in the rental agreement entered into prior to November 1, 1985.

§ 114. Reserved

§ 115. Damage or security deposits

A. Any damage or security deposit required by a landlord of a tenant must be kept in an escrow account for the tenant. Misappropriation of the security deposit shall be a crime and punishable by a term in the Cherokee Nation Tribal detention facility not to exceed six (6) months and by a fine in an amount not to exceed twice the amount misappropriated from the escrow account.

B. Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with this act and the rental agreement, all as itemized by the landlord in a written statement to be delivered by mail with a return receipt requested and to be signed for by any person of statutory service age at such address or in person to the tenant if he can reasonably be found. If the landlord proposes to retain any portion of the security deposit for rent, damages or other legally allowable charges under the provisions of this act or the rental agreement, the landlord shall return the balance of the security deposit without interest to the tenant within thirty (30) days after the termination of tenancy, delivery of possession and written demand by the tenant. If the tenant does not make such written demand of such deposit within six (6) months after termination of the tenancy, the deposit reverts to the landlord in consideration of the costs and burden of maintaining the escrow account, and the interest of the tenant in that deposit terminates at that time.

C. Upon cessation of a landlord's interest in the dwelling unit including, but not limited to, termination of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the person in possession of the tenants' damage or security deposits at his option or pursuant to court order shall, within a reasonable time:

1. transfer said deposits to the landlord's successor in interest and notify the tenants in writing of such transfer and of the transferee's name and address; or
2. return the deposits to the tenants.

D. Upon receipt of the transferred deposits under paragraph 1 of subsection (C) of this section, the transferee, in relation to such deposits, shall have all the rights and obligations of a landlord holding such deposits under this act.

E. If a landlord or manager fails to comply with this section or fails to return any prepaid rent required to be paid to a tenant under this act, the tenant may recover the damage and security deposit and prepaid rent, if any.

F. Except as otherwise provided by the rental agreement, a tenant shall not apply or deduct any portion of the security deposit from the last month's rent or use or apply such tenant's security deposit at any time in lieu of payment of rent.

G. This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this act.

H. Tenants under an MHO agreement may bring an action for settlement or accounting of the disputed accounts and contributions only after the tenants have exhausted their administrative remedies provided by the Indian Housing Authority.

§ 116. Person to accept service or notice-Identity of owner and manager-Failure to comply

A. As a part of any rental agreement the lessor shall prominently and in writing identify what person at what address is entitled to accept service or notice under this act. The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

1. the person or persons authorized to manage the premises;
2. the owner or owners of the premises; or
3. the name and address of a person authorized to act for and on behalf of the owner for the purpose of receipt of service of process and receiving and receipting for notices. The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor owner, landlord or manager.

B. A person who fails to comply with this section becomes a landlord for the purposes of this act and an agent of each person who is otherwise a landlord for:

1. receipt of service of process and receiving and receipting for notices and demands; and
2. performing the obligations of a landlord under this act and under the rental agreement and expending and making available for the purpose all rents collected from the premises.

§ 117. Commencement of tenancy-Delivery of possession-Wrongful possession

At the commencement of the term a landlord shall deliver full possession of the premises to the tenant in compliance with the rental agreement and 41 CNCA § 118. Except as otherwise provided in this act, the landlord may bring an action for possession against any other person wrongfully in possession and may recover his damages.

§ 118. Duties of landlord and tenant

A. A landlord shall at all times during the tenancy:

1. Except in the case of a single-family residence, keep all common areas of his building, grounds facilities and appurtenances in a clean, safe and sanitary condition;
2. Make all repairs and do whatever is necessary to put and keep the tenant's dwelling unit and premises in a fit and habitable condition;
3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
4. Except in the case of one or two-family residences or where provided by a governmental entity, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the frequent removal of such wastes; and
5. Except in the case of a single-family residence or where the service is supplied by direct and independently-metered utility connections to the dwelling unit, supply running water and reasonable amounts of hot water at all times and reasonable heat.

B. The landlord and tenant of a dwelling unit may agree by a conspicuous writing independent of the rental agreement that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling.

C. Conflicting terms of MHO agreements approved by the Indian Housing Authority shall supersede provisions of this section.

§ 119. Conveyance of property-Attornment of tenant

A. A conveyance of real estate, or of any interest therein, by a landlord shall be valid without the attornment of the tenant, but the payment of rent by the tenant to the grantor at any time before written notice of the conveyance is given to the tenant shall be good against the grantee.

B. The attornment of a tenant to a stranger shall be void and shall not affect the possession of the landlord unless it is made with the consent of the landlord, or pursuant to a judgment at law, or the order or decree of a court.

C. Unless otherwise agreed and except as otherwise provided in this act, upon termination of the owner's interest in the dwelling unit including, but not limited to, terminations of interest by sale, assignment, death, bankruptcy, appointment of a receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under this act as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under this act. Upon receipt by a resident of written notice of the termination of the owner's interest in the dwelling unit, a resident shall pay all future rental payments, when due, to the successor in interest to the owner.

D. Unless otherwise agreed and except as otherwise provided in this act, a manager of premises that includes a dwelling unit is relieved of liability under a rental agreement and this act as to events occurring after written notice to the tenant of the termination of his management.

§ 120. Failure of landlord to deliver possession of dwelling unit to tenant

A. If the landlord fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may terminate the rental agreement by giving a written notice of such termination to the landlord, whereupon the landlord shall return all prepaid rent and deposit, or the tenant may, at his option, demand performance of the rental agreement by the landlord and maintain an action for possession of the dwelling unit against any person wrongfully in possession and recover the actual damages sustained by him.

B. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than twice the monthly rental as specified in the rental agreement, computed and prorated on a daily basis, for each month, or portion thereof, that said person wrongfully remains in possession.

§ 121. Landlord's breach of rental agreement-Deductions from rent for repairs-Failure to supply heat, water or other essential services-Habitability of dwelling

A. Except as otherwise provided in this act, if there is a material noncompliance by the landlord with the terms of the rental agreement or a noncompliance with any of the provisions of 41 CNCA § 118 which noncompliance materially affects health or safety, the tenant may deliver to the landlord a written notice specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within fourteen (14) days, and thereafter the rental agreement shall so terminate as provided in the notice unless the landlord adequately remedies the breach within the time specified.

B. Except as otherwise provided in this act, if there is a material noncompliance by the landlord with any of the terms of the rental agreement or any of the provisions of 41 CNCA § 118 which noncompliance materially affects health and the breach is remediable by repairs, the reasonable cost of which is less than One Hundred Dollars (\$100.00), the tenant may notify the landlord in writing of his intention to correct the condition at the landlord's expense after the expiration of fourteen (14) days. If the landlord fails to comply within said fourteen (14) days, or as promptly as conditions require in the case of an emergency, the tenant may thereafter cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection, in which event the rental agreement shall not terminate by reason of that breach.

C. Except as otherwise provided in this act, if, contrary to the rental agreement or 41 CNCA § 118, the landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas or other essential service, the tenant may give written notice to the landlord specifying the breach and thereafter may:

1. Upon written notice, immediately terminate the rental agreement; or
2. Procure reasonable amounts of heat, hot water, running water, electric, gas or other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or
3. Recover damages based upon the diminution of the fair rental value of the dwelling unit; or
4. Upon written notice, procure reasonable substitute housing during the period of the landlord's

noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

D. Except as otherwise provided in this act, if there is a noncompliance by the landlord with the terms of the rental agreement or 41 CNCA § 118, which noncompliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and which noncompliance is not remedied as promptly as conditions require, the tenant may immediately terminate the rental agreement upon written notice to the landlord which notice specifies the noncompliance.

E. All rights of the tenant under this section do not arise until he has given written notice to the landlord or if the condition complained of was caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent.

F. Conflicting terms of a MHO agreement approved by the Indian Housing Authority shall supersede provisions of this section.

§ 122. Damage to or destruction of dwelling unit-Rights and duties of tenant

A. If the dwelling unit or premises are damaged or destroyed by fire or other casualty to an extent that enjoyment of the dwelling unit is substantially impaired, unless the impairment is caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent, the tenant may:

1. Immediately vacate the premises and notify the landlord in writing within one (1) week thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or
2. If continued occupancy is possible, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair value of the dwelling unit.

B. If the rental agreement is terminated under this section the landlord shall return all deposits recoverable under 41 CNCA § 115 and all prepaid and unearned rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or other casualty.

§ 123. Wrongful removal or exclusion from dwelling unit

If a landlord wrongfully removes or excludes a tenant from possession of a dwelling unit, the tenant may recover possession by a proceeding brought in Cherokee Nation District Court, or terminate the rental agreement after giving notice of such intention to the landlord, and in either case recover an amount not more than twice the average monthly rental, or twice his actual damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all deposits recoverable under 41 CNCA § 115 and all prepaid and unearned rent.

§ 124. Unlawful entry or lawful entry in unreasonable manner-Harassment of tenant-Damages

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the tenant by

making repeated unreasonable demands for entry, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or, upon written notice, terminate the rental agreement. In either case the tenant may recover actual damages.

§ 125. Defective condition of premises-Report to landlord

Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is unknown to the landlord, shall be reported by the tenant to the landlord as soon as practicable.

§ 126. Tenant's use and occupancy of premises-Rules and regulations

A. A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, peace, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally; and
2. It is reasonably related to the purpose for which it is adopted; and
3. It applies to all tenants in the premises in a fair manner; and
4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant what such tenant must or must not do to comply; and
5. It is not for the purpose of evading the obligations of the landlord; and
6. The tenant has notice of it at the time such tenant enters into the rental agreement, or when it is adopted.

B. If the rule or regulation is adopted after the tenant enters into the rental agreement and that rule or regulation works a substantial modification of such tenant's bargain, the rule or regulation so adopted is not valid and enforceable against the tenant unless he consents to it in writing.

§ 127. Duties of tenant

A. The tenant shall at all times during the tenancy comply with the following in such a manner as to protect the property interest of his landlord and any person who resides within three hundred feet (300') of the boundary of the tenant's dwelling unit:

1. Keep that part of the premises which such tenant occupies and uses as safe, clean and sanitary as the condition of the premises permits;
2. Dispose from such tenant's dwelling unit all ashes, garbage, rubbish and other waste in a safe, clean and sanitary manner;
3. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean and sanitary as their condition permits;
4. Use in a safe and nondestructive manner all electrical, plumbing, sanitary, heating, ventilating, air-

conditioning and other facilities and appliances including elevators in the premises;

5. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person, animal or pet to do so;

6. Not engage in conduct or allow any person or animal or pet, on the premises with the express or implied permission or consent of the tenant, to engage in conduct that will disturb the quiet and peaceful enjoyment of the premises by other tenants.

B. Cherokee Nation or persons who reside within three hundred feet (300') of the offending tenant's dwelling unit and whose peaceful enjoyment or property is damaged by violation of subsection (A) may bring against the tenant or any third party a cause of action for abatement of the violation and/or damages.

§ 128. Consent of tenant for landlord to enter dwelling unit-Emergency entry-Abuse of right of entry-Notice-Abandoned premises-Refusal of consent

A. A tenant shall not unreasonably withhold consent to the landlord, his agents and employees, to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

B. A landlord, his agents and employees may enter the dwelling unit without consent of the tenant in case of emergency.

C. A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least one (1) day's notice of his intent to enter and may enter only at reasonable times.

D. Unless the tenant has abandoned or surrendered the premises, a landlord has no other right of access during a tenancy except as is provided in this act or pursuant to a court order.

E. If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or he may terminate the rental agreement.

§ 129. Tenant's breach of rental agreement-Wrongful abandonment

A. Unless otherwise agreed, use by the tenant of the dwelling unit for any purpose other than as his place of abode shall constitute a breach of the rental agreement and shall be grounds for terminating the rental agreement.

B. If the tenant wrongfully quits and abandons the dwelling unit during the term of the tenancy, the landlord shall make reasonable efforts to make the dwelling unit available for rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, said rental agreement terminates as of the commencement date of the new tenancy. If the landlord fails to use reasonable efforts to make the dwelling unit available for rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If, after making reasonable effort to make the dwelling unit available for rental after abandonment, the landlord fails to re-rent the premises for a fair rental during the term, the tenant shall be liable for the entire rent or the

difference in rental, whichever may be appropriate, for the remainder of the term. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

§ 130. Abandoning, surrendering or eviction from possession of dwelling unit-Disposition of personal property

If the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in the dwelling unit, the landlord may take possession of the property, and if, in the judgment of the landlord, the property has no ascertainable or apparent value, the landlord may dispose of the property without any duty of accounting or any liability to any party. Any property left with the landlord for a period of three (3) months or longer shall be conclusively determined to be abandoned and as such the landlord may dispose of said property in any manner which he deems reasonable and proper without liability to the tenant or any other interested party.

§ 131. Delinquent rent

- A. If rent is unpaid when due, the landlord may bring an action for recovery of the rent at any time thereafter.
- B. A landlord may terminate a rental agreement for failure to pay rent when due, if the tenant fails to pay the rent within five (5) days after written notice of landlord's demand for payment.
- C. Demand for past due rent is deemed a demand for possession of the premises and no further notice to quit possession need be given by the landlord to the tenant for any purpose.

§ 132. Reserved

§ 133. Lien on tenant's property

A landlord shall have a lien upon that part of the property belonging to the tenant which has a reasonable relationship as nearly as practicable to the amount of the debt owed, which may be in a rental unit used by him at the time notice is given, for the proper charges owed by the tenant, and for the cost of enforcing the lien, with the right to possession of the property until the debt obligation is paid to the landlord. Provided, however, that such lien shall be secondary to the claim of any prior bona fide holder of chattel mortgage or to the rights of a conditional seller of such property, other than the tenant. For purposes of this section, property shall mean any baggage or other property belonging to the tenant which may be in the rental unit used by the tenant but which shall not include all tools, musical instruments or books used by the tenant in any trade or profession, all family portraits and pictures, all wearing apparel, any type of prosthetic or orthopedic appliance, hearing aid, glasses, false teeth, glass eyes, bedding, contraceptive devices, soap, tissues, washing machines, vaporizers, refrigerators, food, cooking and eating utensils, all other appliances personally used by the tenant for the protection of his health, or any baby bed or any other item used for the personal care of babies.

§ 134. Procedure for enforcement of lien

- A. The lien provided for by 41 CNCA § 133 may be foreclosed by a sale of such personal property upon the notice and in the manner following:

The notice shall contain:

1. The names of the owner and any other party or parties who may claim any interest in said property;
2. A description of the property to be sold;
3. The value of the rent provided and unpaid and the dates thereof;
4. The time and place of sale;
5. The name of the party, agent or attorney foreclosing such lien.

B. Such notice shall be posted on the front door of the tenant's dwelling unit at least ten (10) days before the time therein specified for such sale, and a copy of said notice shall be mailed to the owner and any other party or parties claiming any interest in said property if known, at their last known post office address by certified mail on the day of posting. Party or parties who claim any interest in said property shall include owners of chattel mortgages and conditional sales contracts as shown by the records in the office of the county clerk in the county where the lien is foreclosed.

C. The lienor or any other person may in good faith become a purchaser of the property sold.

D. Proceedings for foreclosure under this act shall not be commenced until thirty (30) days after the lien has accrued.

§ 135. Construction of act

This act shall be liberally construed and applied to promote and effectuate its underlying purposes and policies.

§§ 136 to 139. Reserved

§ 140. Federal rules and regulations affecting Indian housing programs shall take precedence

Any rule or regulation that has been promulgated by the United States of America, through the Department of Housing and Urban Development, for the implementation and management of Indian housing programs and which the Indian Housing Authority is required to follow shall supersede the provisions of this act and shall be controlling with respect to this act. Prior to commencement of any action under this act an aggrieved party must first exhaust all available administrative remedies available including those applicable and provided by an MHO.

§ 141. Claims brought under provisions of Landlord and Tenant Procedures Act

Actions under the Non-Residential Landlord and Tenant Act of Cherokee Nation and the Residential Landlord and Tenant Act shall be brought in accordance with the provisions of the Cherokee Nation Landlord and Tenant Procedure Act.

§ 142. Termination of mutual help occupancy agreement

A. The procedure for the termination of the MHO shall be according to 24 C.F.R. § 905.446.

B. In the event that the home buyer disputes any item in the settlement following a termination of an MHO or the disposition of personal property abandoned by the home buyer, the home buyer shall first exhaust all

administrative remedies available through the Indian Housing Authority's grievance procedure before the matter shall be within the jurisdiction of the District Court of Cherokee Nation.

§ 143. Rules of evidence

The Federal Rules of Evidence, Public Law 93-595, 88 Stat. 1926, and its cumulative amendments shall apply to all proceedings of the Court.

Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. Effective Date

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force after its passage and approval.

Section 9. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.