



Legislation Text

File #: CNCA-41, Version: 1

TITLE 41 - LANDLORD AND TENANT

CHAPTER 1

GENERAL PROVISIONS

§ 1. Short title

This enactment shall be known as the Cherokee Nation Housing Code. This enactment is comprised of three acts: the Cherokee Nation Residential Landlord Tenant Act, the Cherokee Nation Non-Residential Landlord Tenant Act, and the Cherokee Nation Landlord and Tenant Procedures Act.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>1.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1 to 5, 8 to 9, 11.

§ 2. Purpose

The purpose of this Title is to provide substantive and procedural law for determining the rights, obligations, damages and remedies for landlords and tenants.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>1.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1 to 5, 8 to 9, 11.

§ 3. Definitions

Definitions appear in each of the following acts.

History

Source. LA 17-91, eff. December 14, 1991.

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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176, 227.

Landlord and Tenant <KEY>4.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians §§ 76, 109.

C.J.S. Landlord and Tenant § 6.

§ 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.

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.

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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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 ¹.

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.

¹ So in original; probably should read "as provided in this act, the prevailing party shall be entitled to reasonable attorney fees".

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>500, 661.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>22.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 303 to 316, 319 to 333, 339, 344.

§ 104. Reserved

§ 105. Mitigation of damages

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

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>535.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff., December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>183.

Landlord and Tenant <KEY>182.

Westlaw Topic Nos. 209, 233.

C.J.S. Landlord and Tenant §§ 1081 to 1087.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>181.

Landlord and Tenant <KEY>115, 118(2).

Westlaw Topic Nos. 209, 233.

C.J.S. Landlord and Tenant §§ 245 to 246, 248 to 250, 272.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>181.

Landlord and Tenant <KEY>116, 120.

Westlaw Topic Nos. 209, 233.

C.J.S. Landlord and Tenant §§ 232, 238 to 243, 247, 251 to 257, 278 to 291, 301 to 302.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>181.

Landlord and Tenant <KEY>116, 120.

Westlaw Topic Nos. 209, 233.

C.J.S. Landlord and Tenant §§ 232, 238 to 243, 247, 251 to 257, 278 to 291, 301 to 302.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>180.

Landlord and Tenant <KEY>24.

Westlaw Topic Nos. 209, 233.

C.J.S. Landlord and Tenant §§ 344, 350 to 358.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>180.

Landlord and Tenant <KEY>184.

Westlaw Topic Nos. 209, 233.

C.J.S. Landlord and Tenant §§ 1096 to 1104.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>180.

Landlord and Tenant <KEY>187, 188.

Westlaw Topic Nos. 209, 233.

C.J.S. Landlord and Tenant §§ 1114, 1128, 1131 to 1132.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>15.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 20 to 21.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>128.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 724 to 728, 730.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>150.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 859 to 861, 864 to 868, 878.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>154.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 890 to 906.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>278.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant § 1491.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>535.

Landlord and Tenant <KEY>278.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians §§ 151 to 179.

C.J.S. Landlord and Tenant § 1491.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>134(2).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 791 to 795, 797.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>277.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1487, 1489 to 1490, 1495 to 1497.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>110, 120(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 213 to 222, 285, 301.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>110, 120(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 213 to 222, 285, 301.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>198.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant § 1133.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>239, 245.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1355, 1369, 1375, 1378 to 1382.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>257.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1361 to 1362, 1367 to 1368, 1418 to 1423, 1425 to 1433.

§ 135. Construction of act

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

History

Source. LA 17-91, eff. December 14, 1991.

§§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176, 227.

Westlaw Topic No. 209.

C.J.S. Indians §§ 76, 109.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Code of Federal Regulations

Termination of mutual help occupancy agreement, see 25 C.F.R. § 950.446 (1998).

§ 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.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176, 520.

Westlaw Topic No. 209.

C.J.S. Indians §§ 109, 151 to 179.

CHAPTER 3

NON-RESIDENTIAL LANDLORD AND TENANT ACT

§ 200. Application

The Non-Residential Landlord and Tenant Act shall apply to all non-residential property under the jurisdiction of Cherokee Nation of which Cherokee Nation has a property interest as defined by 41 CNCA § 251.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>4.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant § 6.

§ 201. Who deemed tenant at will

Any person in the possession of real property, with the assent of the owner, is presumed to be a tenant at will, unless the contrary is shown, except as herein otherwise provided.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>118.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 264 to 277.

§ 202. Tenant holding over as tenant at will-Expiration of unwritten contract

When premises are let for one or more years, and the tenant, with the assent of the landlord, continues to occupy the premises after the expiration of the term, such tenant shall be deemed to be a tenant at will; provided, that no lease or rental contract of premises shall be continued, unless the original contract was in writing, and all other lease or contracts shall expire by limitation with the calendar year, without notice.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>118(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 276 to 277.

§ 203. Tenant holds from one period to another, when

When rent is reserved, payable at intervals of three months or less, the tenant shall be deemed to hold from one period to another, equal to the intervals between the days of payment, unless there is an express contract to the contrary.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>118(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 276 to 277.

§ 204. Time of notice to terminate tenancy

Thirty (30) days' notice in writing is necessary to be given by either party before he can terminate a tenancy at will, or from one period to another, of three months or less; but where in any case rent is reserved, payable at intervals of less than thirty days, the length of notice need not be greater than such interval between the days of payment.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>120(2).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 286, 288 to 291, 302.

§ 205. Termination of tenancy from year to year

All tenancies from year to year, may be terminated by at least three (3) months' notice, in writing, given to the tenant prior to the expiration of the year.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>116(1).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant § 232.

§ 206. Notice to quit where rent not paid

If a tenant, for a period of three months or longer, neglects or refuses to pay rent when due, then (10) days' notice in writing to quit, shall determine the lease, unless such rent be paid before the expiration of said ten (10) days.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>94(6).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 148 to 149, 151 to 152, 154 to 157, 192 to 193.

§ 207. Notice when rent not paid under tenancy for less than three months

If a tenant for a period of less than three months, shall neglect or refuse to pay rent when due, five (5) days' notice, in writing, to quit, shall determine the lease, unless such rent be paid before the expiration of said five (5) days.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>94(6), 116(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 148 to 149, 151 to 152, 154 to 157, 192 to 193, 247.

§ 208. Notice to quit not required, when

When the time for the termination of a tenancy is specified in the contract, or where a tenant at will commits waste, or in the case of a tenant by sufferance, and in any case where the relation of landlord and tenant does not exist no notice to quit shall be necessary.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>94(6).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 148 to 149, 151 to 152, 154 to 157, 192 to 193.

§ 209. Service of notice-Termination of tenancy

The notice to terminate the tenancy required in this act may be served on the tenant, or, if he cannot be found, by delivering the same to some person over the age of twelve (12) years, residing on the premises, having first made known to such person the contents thereof; or, if service cannot be made by the use of reasonable diligence on the tenant or on any person over the age of twelve (12) years residing on the premises, the same may be served by posting said notice at some conspicuous place on the building on said premises and if there be no buildings on said premises then said notice shall be posted at some conspicuous place on said premises and if said notice is posted, a copy of said notice shall be mailed to the tenant at his last-known address by registered mail and such notice shall operate to terminate the tenancy at the end of the period after the date of such posting and mailing that it would have been terminated by personal service of such notice on the date of such posting and mailing; provided, that in no event shall such posting and mailing terminate any tenancy within a period of less than ten days from the date of such posting and mailing.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>94(6).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 148 to 149, 151 to 152, 154 to 157, 192 to 193.

§ 210. Tenant may not assign, when

No tenant for a term not exceeding two (2) years, or at will, or by sufferance, shall assign or transfer his term or interest, or any part thereof, to another, without the written assent of the landlord or person holding under him.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>75.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 31 to 32, 38 to 41.

§ 211. Landlord may reenter after unauthorized assignment

If any tenant shall violate the provisions of the preceding section, the landlord or person holding under him, after giving ten (10) days' notice to quit possession, shall have a right to reenter the premises and take possession thereof, and dispossess the tenant, subtenant or undertenant.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>277.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1487, 1489 to 1490, 1495 to 1497.

§ 212. Attornment unnecessary to conveyance

A conveyance of real estate, or of any interest therein, by the 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 notice of sale, given to said tenant, shall be good against the grantee.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>15.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 20 to 21.

§ 213. Attornment to stranger void

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

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>15.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 20 to 21.

§ 214. Rights of sublessee

Sublessees shall have the same remedy upon the original covenant against the principal landlord as they might have had against their immediate lessor.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>80.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 60 to 65, 796.

§ 215. Rights of alienees of lessors and lessees

Alienees of lessors and lessees of land shall have the same legal remedies in relation to such lands as their principal.

History

Source. LA 17-91, eff. December 14, 1991.

§ 216. Rents from life grants

Rents from lands granted for life or lives may be recovered as other rents.

History

Source. LA 17-91, eff. December 14, 1991.

§ 217. Recovery of arrears of rent from life grants after death

A person entitled to rents dependent on the life of another, may recover arrears unpaid at the death of that other.

History

Source. LA 17-91, eff. December 14, 1991.

§ 218. Rights and liabilities of executors and administrators

Executors and administrators shall have the same remedies to recover rents, and be subject to the same liabilities to pay them, as their testators and intestates.

History

Source. LA 17-91, eff. December 14, 1991.

§ 219. Occupants without contract liable for rent

The occupant of any lands, without special contract, shall be liable for the rent to any person entitled thereto.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>183.

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 1088 to 1089.

§ 220. Contribution by joint tenants

If a joint tenant, or tenant in common, or tenant in coparcenary, have, by consent, management of the estate, and make repairs and improvements with the knowledge, and without objection, of his cotenant or coparcener, such cotenant or coparcener shall contribute ratably thereto.

History

Source. LA 17-91, eff. December 14, 1991.

§ 221. Joint tenant may recover his share of rents

A joint tenant, or tenant in common, or tenant in coparcenary, may maintain an action against his cotenant or coparcener, or their personal representatives, for receiving more than his just proportion of the rents and profits.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Joint Tenancy <KEY>7.

Westlaw Topic No. 226.

C.J.S. Joint Tenancy §§ 15, 23 to 35.

§ 222. Recovery for waste or trespass by remainderman

A person seized of an estate in remainder or reversion may maintain an action for waste or trespass, for injury to the inheritance, notwithstanding an intervening estate for life or years.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>507.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 223. Farm rent lien on crop

Any rent due for farming land shall be a lien on the crop growing or made on the premises. Such lien may be enforced by action and attachment therein, as hereinafter provided.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Landlord and Tenant <KEY>246(2).

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant §§ 1356, 1383 to 1384.

§ 224. Crop rent

When any such rent is payable in a share or certain proportion of the crop, the lessor shall be deemed the owner of such share or proportion, and may if the tenant refuse to deliver him such share or proportion, enter upon the land and take possession of the same, or obtain possession thereof by action of replevin.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Landlord and Tenant <KEY>215.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant § 1186.

§ 225. Removal of crops to defraud landlord

Any person who shall remove any crops from leased or rented premises with intent to deprive the owner or landlord interested in said land of any of the rent due from said land, or who shall fraudulently appropriate the rent due the owner or landlord of said land, to himself or any person not entitled thereto, shall be deemed guilty of embezzlement and punished accordingly.

History

Source. LA 17-91, eff. December 14, 1991.

§ 226. Purchaser of crop with notice liable for rent

The person entitled to rent may recover from the purchaser of the crop, or any part thereof, with notice of the lien, the value of the crop purchased, to the extent of the rent due and damages.

History

Source. LA 17-91, eff. December 14, 1991.

§ 227. Landlord may have attachment, when

When any person who shall be liable to pay rent (whether the same be due or not, if it be due within one (1) year thereafter, and whether the same be payable in money or other things), intends to remove or is removing, or has, within thirty (30) days, removed his property, or his crops, or any part thereof, from the leased premises, the person to whom the rent is owed may commence an action; and upon making an affidavit, stating the amount of rent for which such person is liable, and one or more of the above facts, and executing an undertaking as in other cases, an attachment shall issue in the same manner and with the like effect as is provided by law in other actions.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Landlord and Tenant <KEY>229.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant §§ 1327 to 1350.

§ 228. Attachment for rent lien on crops

In an action to enforce a lien on crops for rent of farming lands, the affidavit for attachment shall state that there is due from the defendant to the plaintiff a certain sum, naming it, for rent of farming lands, describing the same, and that the plaintiff claims a lien on the crop made on such land. Upon making and filing such affidavit and executing an undertaking as prescribed in the preceding section, an order of attachment shall issue as in other cases, and shall be levied on such crop, or so much thereof as may be necessary; and all other proceedings in such attachment shall be the same as in other actions.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Landlord and Tenant <KEY>229.

Westlaw Topic No. 233.

C.J.S. Landlord and Tenant §§ 1327 to 1350.

§ 229. Reserved

§ 230. Taxation of improvements

All improvements put on leased lands, that do not become a part of the realty, shall be assessed to the owner of such improvements as personal property; and the taxes imposed on such improvements shall be collected by levy and sale of the interest of such owner, the same as in all other cases of the collection of taxes on personal property.

History

Source. LA 17-91, eff. December 14, 1991.

§§ 231, 232. Reserved

§ 233. Lease presumed to be for one year

A lease of real property, other than lodgings, in a places where there is no usage on the subject, is presumed to be for one (1) year from its commencement, unless otherwise expressed in the lease.

History

Source. LA 17-91, eff. December 14, 1991.

§ 234. Reserved

§ 235. Continued possession renews the lease, when

If a lessee of real property remains in possession thereof, after the expiration of the lease and the lessor accepts rent from him, the parties are presumed to have renewed the lease on the same terms and for the same time, not exceeding one (1) year.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>114(3), 118(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 233 to 237, 276 to 277.

§ 236. Renewal of lease presumed unless notice of termination given

A lease of real property, for a term not specified by the parties, is deemed to be renewed, as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the lease itself, not exceeding one (1) month.

History

Source. LA 17-91, eff. December 14, 1991.

§ 237. Rent payable, when

When there is no contract or usage to the contrary, the rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for shorter period than the periods herein specified is payable at the termination of such period.

History

Source. LA 17-91, eff. December 14, 1991.

§ 238. Duty of tenant in case of proceedings

Every tenant who received notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which said landlord may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing.

History

Source. LA 17-91, eff. December 14, 1991.

§§ 239 to 250. Reserved

§ 251. Abandonment or surrender of non-residential rental property-Definitions

As used in the Cherokee Nation Landlord Non-Residential Tenant Act:

1. "**Landlord**" means the owner, lessor or sublessor of a non-residential rental property;
2. "**Non-residential rental property**" means any land or building which is rented or leased to a tenant for other than residential purposes and the rental agreement of which is not regulated under the provisions of the Cherokee Nation Residential Landlord and Tenant Act.
3. "**Tenant**" means any person entitled under a rental agreement to occupy the non-residential rental property.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>120(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 285, 301.

§ 252. Abandonment or surrender of non-residential rental property-Disposition of personal property of tenant-Notice-Storage costs-Liability of landlord-Application of proceeds of sale

A. If a tenant abandons, surrenders possession of, or is evicted from non-residential rental property and leaves goods, furnishings, fixtures or any other personal property on the premises of the non-residential rental property, the landlord may take possession of the personal property ten (10) days after the tenant receives personal service of notice or fifteen (15) days after notice is mailed, whichever is latest, and if the personal property has no ascertainable or apparent value, the landlord may dispose of the personal property in a reasonable commercial manner. In any such case, the landlord has the option of complying with the provisions of subsection (B) of this section.

B. If the tenant abandons, surrenders possession of, or is evicted from the non-residential rental property and leaves goods, furnishings, fixtures or any other personal property of an ascertainable or apparent value on the premises of the non-residential rental property, the landlord may take possession of the personal property and give notice to the tenant, demanding that the personal property be removed within the dates set out in the notice but not less than (15) days after delivery or mailing of such notice, and that if the personal property is not removed within the time specified in the notice, the landlord may sell the personal property at a public sale. The landlord may dispose of perishable commodities in any manner the landlord considers fit. Payment by the tenant of all outstanding rent, damages, storage fees, court costs and attorney fees shall be a prerequisite to the return of the personal property. For purposes of this section, notice sent by registered or certified mail to the tenant's last-known address with forwarding requested shall be deemed sufficient notice.

C. After notice is given as provided in subsection (B) of this section, the landlord shall store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care of the personal property. The landlord shall not be responsible to the tenant for any loss not caused by the landlord's deliberate or negligent act. The landlord may elect to store the personal property on the premises of the non-residential rental property that was abandoned or surrendered by the tenant or from which the tenant was evicted, in which event the storage cost may not exceed the fair rental value of the premises. If the tenant's personal property is removed to a commercial storage company, the storage cost shall include the actual charge for the storage and removal from the premises to the place of storage.

D. If the tenant makes timely response in writing of an intention to remove the personal property from the premises and does not do so within the later of the time specified in the notice provided for in subsection (B) of this section or within fifteen (15) days of the delivery or mailing of the tenant's written response, it shall be conclusively presumed that the tenant abandoned the personal property. If the tenant removes the personal property within the time limitations provided in this subsection, the landlord is entitled to the cost of storage for the period during which the personal property remained in the landlord's safekeeping plus all other costs that accrued under the rental agreement.

E. If the tenant fails to take possession of the personal property as prescribed in subsection (D) of this section and make payments of all amounts due and owing, the personal property shall be deemed abandoned and the landlord may thereupon sell the personal property in any reasonable manner without liability to the tenant.

F. Notice of sale shall be mailed to the owner and any other party claiming any interest in said personal property, if known, at their last-known post office address, by certified or registered mail at least ten (10) days before the time specified therein for such sale. For purposes of this section, parties who claim an interest in the personal property include holders of security interests or other liens or encumbrances as shown by the records in the office of the court clerk of the county where the lien would be foreclosed.

G. The landlord or any other person may in good faith become a purchaser of the personal property sold. The landlord may dispose of any personal property upon which no bid is made at the public sale.

H. The landlord may not be held to respond in damages in an action by a tenant claiming loss by reason of the landlord's electing to destroy, sell or otherwise dispose of the personal property in compliance with the provisions of this section. If, however, the landlord deliberately or negligently violated the provisions of this section, the landlord shall be liable for actual damages.

I. Any proceeds from the sale or other disposition of the personal property, as provided in subsection (B) of this section, shall be applied by the landlord in the following order:

1. to the reasonable expenses of taking, holding, preparing for sale or disposition, giving notice and selling or disposing thereof;
2. to the satisfaction of any properly recorded security interest;
3. to the satisfaction of any amount due from the tenant to the landlord for rent or otherwise;
4. the balance, if any, shall be paid into the court within thirty (30) days of the sale and held for six (6) months and, if not claimed by the owner of the personal property within that period, shall escheat to Cherokee Nation.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>176.

Landlord and Tenant <KEY>120(4).

Westlaw Topic Nos. 209, 233.

C.J.S. Indians § 109.

C.J.S. Landlord and Tenant §§ 285, 301.

§ 253. Claims brought under the Landlord and Tenant Procedures Act

Actions under this act shall be brought in Cherokee Nation District Court and under the provisions of the Cherokee Nation Landlord and Tenant Procedures Act.

History

Source. LA 17-91, eff. December 14, 1991.

§ 254. 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 non-residential property 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.

History

Source. LA 17-91, eff. December 14, 1991.

CHAPTER 4

LANDLORD AND TENANT PROCEDURES ACT

§ 1751. Suits authorized under landlord and tenant procedures

The following suits may be brought under the landlord and tenant procedures:

1. Actions under the Non-Residential Landlord and Tenant Act and Residential Landlord and Tenant Act for the adjudication of rights arising thereunder, recovery of damages or rents, and other such equitable relief as justice requires.

2. No action may be brought under landlord and tenant procedures by any collection agency, collection agent or any assignee of a claim.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>500.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1752. Reserved

§ 1753. Affidavit-Form-Filing

Actions under this act shall be initiated by plaintiff or his attorney filing an affidavit in substantially the following form with the Clerk of the Court:

In the District Court of Cherokee Nation

Plaintiff

LT No. _____

vs.

Defendant

CHEROKEE NATION }
 }ss.
CHEROKEE COUNTY }

_____, being sworn, deposes and says:

That the defendant resides at _____, in _____ county, in Cherokee Nation and that the mailing address of the defendant is _____.

That the defendant is indebted to the plaintiff in the sum of \$_____ for rent, and for the further sum of \$_____ for damages to the premises rented by the defendant; that plaintiff has demanded payment of said sum(s), but the defendant refused to pay the same and no part of the amount sued for has been paid,

and/or

That the defendant is wrongfully in possession of certain real property described as _____, that plaintiff is entitled to possession thereof and had demanded that defendant relinquish possession of said real property and vacate the premises but that defendant wholly refuses to do so.

Subscribed and sworn to before me this _____ day of _____, 20 _____.

Notary Public (Clerk or Judge)

My Commission Expires:

On the affidavit shall be printed:

ORDER AND SUMMONS

The people of Cherokee Nation, to the within-named defendant:

You are hereby directed to relinquish immediately to the plaintiff herein total possession of the real property described as ____ appear or to appear and show cause why you should be permitted to retain control and possession thereon.

You are further directed to answer the foregoing claim and to have with you all books, papers and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at ____ (name or address of building), in ____, County of ____, within the boundaries of Cherokee Nation, at the hour of ____ o'clock of the ____ day of ____, 20 ____, or at the same time and place seven (7) days after service hereof, whichever is the latter. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the amount of said rent and/or damages as it is stated in said affidavit, or for possession of the real property described in said affidavit whereupon a writ of assistance shall issue directing the Marshal of Cherokee Nation to remove you from said premises and take possession thereof.

Date this ____ day of ____, 20 ____.

Clerk of the Court (or Judge)

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1754. Preparation of affidavit-Copies

The claimant shall prepare such an affidavit as is set forth in 41 CNCA § 1753, or, at his request, the Clerk of said Court shall draft the same for him. Such affidavit may be presented by the claimant in person or sent to the Clerk by mail. Upon receipt of said affidavit, properly sworn to, the Clerk shall file the same and make a true and correct copy thereof, and the Clerk shall fill in the blanks in the order printed on said copy and sign the

order.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1755. Service of affidavit and order upon defendant

Unless service by the Marshal or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The Clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the Clerk shall deliver a copy of the affidavit and order to the Sheriff who shall serve the defendant in the time set in 41 CNCA § 1756.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>510.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1756. Date for appearance of defendant

The date for the appearance of the defendant as provided in the order endorsed on the affidavit shall not be more than thirty (30) days nor less than ten (10) days from the date of said order. The order shall be served upon the defendant at least seven (7) days prior to the date specified in said order for the appearance of the defendant. If it is not served upon the defendant, the plaintiff must apply to the Clerk for a new order setting a new day for the appearance of the defendant, which shall not be more than thirty (30) days nor less than ten (10) days from the date of the issuance of the new order. When the Clerk has fixed the date for appearance of the defendant, he shall inform the plaintiff, either in person or by certified mail, of said date and order the plaintiff to appear on said date.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>510.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1757. Reserved

§ 1758. Counterclaim or setoff by verified answer

No formal pleading, other than the claim and notice, shall be necessary, but if the defendant wishes to state new matter arising under the Cherokee Nation Non-Residential Landlord and Tenant Act or the Cherokee Nation Residential Landlord and Tenant Act, he shall file a verified answer, a copy of which shall be delivered to the plaintiff in person, and filed with the Clerk of the Court not later than seventy-two (72) hours prior to the hour set for the appearance of said defendant in such action. Such answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF

In the District Court of Cherokee Nation

Plaintiff

vs.

LT

No

Defendant

Claim of defendant.

In the District Court of Cherokee Nation, }

Cherokee County }

} ss.

_____, being first duly sworn, deposes and says: That said plaintiff is indebted to said defendant in the sum of \$____ for _____, which amount defendant prays may be allowed as a claim against the plaintiff herein.

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public (Clerk or Judge)

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1759. Reserved

§ 1760. Depositions-Interrogatories

No depositions shall be taken or interrogatories or other discovery proceeding shall be used under the landlord and tenant procedure except in aid of execution.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>513.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1761. Trial by Court-Request for Reporter or jury-Evidence-Informality

Actions under the landlord and tenant procedure shall be tried to the Court. Provided, however, if either party wishes a Reporter, he must notify the Clerk of the Court in writing at least forty-eight (48) hours before the time set for the defendant's appearance and must deposit with said notice with the clerk Fifty Dollars (\$50.00). The party wishing a Reporter is liable for the cost of the Reporter and must make satisfactory arrangements with the Reporter for payment. The parties may have the proceedings recorded solely by electronic media. The plaintiff and the defendant shall have the right to offer evidence in their behalf by witnesses appearing at such hearing, and the Judge may call such witnesses and order the production of such documents as he may deem appropriate. The hearing and disposition of such action shall be informal with the sole object of dispensing speedy justice between the parties.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>518.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1762. Payment of judgment

If judgment be rendered against either party for the payment of money, said party shall pay the same immediately or pay the judgment in accordance with a judgment satisfaction plan arranged by the Court. Each side shall pay its own attorney fees and court costs.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>526.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1763. Appeals

Appeals may be taken from the judgment rendered under landlord and tenant procedure to the Cherokee Nation Supreme Court in the same manner as appeals are taken in other civil actions.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>540.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1764. Fees

A fee of Fifty Dollars (\$50.00) shall be charged and collected for the filing of the affidavit for the commencement of any action. If a pleading is served by the Marshal, the Court Clerk shall collect a fee of Fifty Dollars (\$50.00) for the Marshal as a service fee. A private process server licensed by the State of Oklahoma may serve pleadings under this act. The party using the services of a private process server must pay the private

process server directly. After judgment, the Court Clerk shall issue such process and shall be entitled to collect only such fees and charges as are allowed by law for like services in other actions. All fees collected as authorized by this section and 41 CNCA § 1772 shall be deposited with other fees that are collected by the District Court.

History

Source. LA 17-91, eff. December 14, 1991.

§§ 1765 to 1771. Reserved

§ 1772. Judgments

Judgments for the payment of money shall be rendered only in determining adjustment of accounts as held by the landlord. The Court may issue writs for securing possession of real property pursuant to Cherokee Nation law.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>526.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1773. Dismissal of action-Failure to file pleadings or serve process

A. Any action under the Landlord and Tenant Procedures Act which is not at issue and in which no pleading has been filed or other action taken for one (1) year and in which no motion has been pending during any part of the year shall be dismissed without prejudice by the Court on its own motion after notice to the parties or their attorneys of record; providing, the Court may, upon written application and for good cause shown by order in writing, allow the action to remain on its docket.

B. If service of process under the Landlord and Tenant Procedures Act is not made upon a defendant within one hundred eighty (180) days after the filing of the affidavit, the action shall be deemed to have been dismissed without prejudice as to that defendant. The action shall not be deemed to have been dismissed where a summons was served on the defendant within one hundred eighty (180) days after the filing of the affidavit and a Court later holds that the summons or its service was invalid. After a Court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the Judge. If the new summons is not served within the specified time, the action shall be deemed to have been dismissed without prejudice as to that defendant. This subsection shall not apply with respect to a defendant who has been in a foreign country for one hundred eighty (180) days following the filing of the affidavit.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>516.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1774. Forcible entry and detention

The District Court shall have jurisdiction to try all actions for the forcible entry and detention, or detention only, of real property, and claims for the collection of rent and damages to the premises, or claims arising under the Cherokee Nation Landlord and Tenant Act, may be included in the same action, but other claims may not be included in the same action. A judgment in an action brought under this act shall be conclusive as to any issues adjudicated therein, but it shall not be a bar to any other action brought by either party.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>501.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1775. Powers of Court

The Court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the Court shall cause the party complainant to have restitution thereof.

History

Source. LA 17-91, eff. December 14, 1991.

§ 1776. Extent of jurisdiction

Proceedings under this act may be had in all cases against tenants holding over their terms and, incident thereto, to determine whether or not tenants are holding over their terms. This section is not to be construed as limiting the provisions of the preceding section.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>501.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1777. Issuance and return of summons

The summons shall be issued and returned as in other cases, except that it shall command the Marshal or other person serving it, to summon the defendant to appear for trial at the time and place specified therein, which time shall be not less than five (5) days nor more than ten (10) days from the date that the summons is issued. The summons shall apprise the defendant of the nature of the claim that is being asserted against him; and there shall be endorsed upon the summons the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear. In all cases, pleadings may be amended to conform to the evidence.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>510.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1778. Service of summons

The summons may be served as in other cases except that such service shall be at least three (3) days before the day of trial, and the return day shall not be later than the day of trial, and it may also be served by leaving a copy thereof with some person over fifteen (15) years of age, residing on the premises, at least three (3) days before the day of trial; or, if service cannot be made by the exercise of reasonable diligence on the tenant or on any person over the age of fifteen (15) years residing on the premises, the same may be served by certified mail with return receipt postmarked at least three (3) days before the date of trial.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>510.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1779. Constructive service of summons

If, in the exercise of reasonable diligence, service cannot be made upon the defendant personally nor upon any person residing upon the premises over fifteen (15) years of age, then in lieu of service by certified mail, service may be obtained for the sole purpose of adjudicating the right to restitution of the premises by the Marshal's posting said summons conspicuously on the building on the premises, then by posting the same at some conspicuous place on the premises sought to be recovered at least five (5) days prior to the date of trial, and by the claimant's mailing a copy of said summons to the defendant at his last-known address by certified mail at least five (5) days prior to said date of trial. Such service shall confer no jurisdiction upon the Court to render any judgment against the defendant for the payment of money nor for any relief other than the restoration of possession of the premises to the claimant, unless the defendant appears at trial. Such service shall not be rendered ineffectual by the failure of the defendant to actually see or receive such posted process nor by his failure to actually receive or sign a return receipt for such mailed process.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>510.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1780. Answer or affidavit by defendant

A. In all cases in which the defendant wishes to assert title to the land or that the boundaries of the land are in dispute, he shall, before the time for the trial of the cause, file a verified answer or any affidavit of the facts constituting his defense of title or boundary dispute. If the defendant files such a verified answer or affidavit, the action shall proceed as one in ejectment before the District Court. If the defendant files an affidavit he shall file answer with ten (10) days after the date the affidavit is filed.

B. In all cases in which the cause of action is based on an asserted breach of a lease by the defendant, or the termination or expiration of a lease under which the defendant claims an interest in the property in a verified answer or affidavit, the plaintiff may proceed with the forcible entry and detainer action instead of an ejectment action.

C. No answer by the defendant shall be required before the time for trial of the cause.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>511.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1781. Trial by Court

Trial shall be by the Court.

History

Source. LA 17-91, eff. December 14, 1991.

Library References

Indians <KEY>521.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

§ 1782. Writ of execution-Form

If judgment be for plaintiff, the Court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

Cherokee Nation to Marshal of Cherokee Nation:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case any be) of the following described premises, to wit ____ lately tried before me, wherein ____ was the plaintiff, and ____ was the defendant, judgment was rendered on the ____ day of ____, 20 ____, that the plaintiff have restitution of said premises; and also that he recover rent in the sum of ____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises and the said plaintiff to have restitution of the same; also that you levy on the goods and chattels of the said defendant, and make legal service and due return.

Witness my hand this ____ day of ____, 20 ____

A.B., Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

History

Source. LA 17-91, eff. December 14, 1991.

§ 1783. Stay of execution by posting supersedeas bond

If no supersedeas bond be posted within the time provided herein, the officer shall forthwith restore the plaintiff to possession of the premises by executing the writ prescribed in the preceding section of the statutes and shall make levy to collect the amount of the judgment. The officer's return shall be upon other executions. The defendant shall have three (3) days after the date of judgment to post a supersedeas bond conditioned as provide by law. This time limit may be enlarged by a Trial Judge's order to not more than ten (10) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. Then rent shall be paid into the Court Clerk's office together with poundage. If there be controversy as to the amount of rent, the Judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the Court Clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rental while the appeal is pending shall be considered as abandonment of the appeal.

History

Source. LA 17-91, eff. December 14, 1991.