



# NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

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## **COURT RULES FOR RENTAL HOUSING CODE JUDICIAL EVICTION PROCEEDINGS CHAPTER 19**

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# **NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL COURT**

## **RULES FOR RENTAL HOUSING CODE JUDICIAL EVICTION PROCEEDINGS CHAPTER 19**

### **Section 1. Title**

- A. This Chapter of Court Rules shall be known as the *Court Rules for Rental Housing Code Judicial Eviction Proceedings*.

### **Section 2. Purpose**

- A. The purpose of this Chapter of Court Rules is to provide a fair and efficient process for a Judicial Eviction case filed under the Nottawaseppi Huron Band of the Potawatomi (NHBP) Rental Housing Code in the NHBP Tribal Court.

### **Section 3. Definitions**

- A. The following words and terms are defined as follows:
1. “*Attachment*” means the legal process of seizing another’s property in accordance with a judicial order for the purpose of securing satisfaction of judgment.
  2. “*Attorney*” and “*Counselor*” and “*Lawyer*” are synonymous and mean an individual admitted to practice, and in good standing, before the courts of any state and is admitted to practice before the Nottawaseppi Huron Band of the Potawatomi Tribal Courts.
  3. “*Band*” and “*Nation*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi.
  4. “*Complaint*” or “*Petition*” means a written statement of facts that asserts a claim against a Party (or Defendant), made voluntarily, and signed by the party (Plaintiff).
  5. “*Court*” and “*Tribal Court*” are synonymous and mean the trial level court of the Nottawaseppi Huron Band of the Potawatomi Tribal Court.
  6. “*Court Clerk*” refers to the Tribal Court Administrator or person designated to perform such duties by the Chief Judge or the Tribal Court Administrator.
  7. “*Day*” means a calendar day.

8. “*Immediate Family Member*” means: domestic partners; parents; grandparents; children; step-children; foster children; grandchildren; siblings; mother-in-law; father-in-law; sisters-in-law; brothers-in-law.
9. “*Joinder*” refers to the process of joining two (2) or more legal issues together to be heard in one (1) hearing or trial so that it helps the Court avoid hearing the same facts multiple times or seeing parties separately when the incident(s) surrounding the case involve the same parties and to make the process more efficient or just.
10. “*Judgment*” means a decision of the Court resolving a particular dispute or disputed issue and determining the rights and obligations of the parties.
11. “*Landlord*” means the person or entity filing the judicial eviction proceeding against the Tenant.
12. “*Party*” means a person or entity who is either the plaintiff or Defendant in a housing case.
13. “*Pleading*” means a formal written statement submitted by the parties.
14. “*Stipulation*” means an agreement between the parties and submitted to the Court.
15. “*Summons*” refers to the document that tells a respondent that he or she is being sued and asserts the power of the court to hear and determine the case.
16. “*Tenant*” means the party against whom the judicial eviction proceeding has been filed.

#### **Section 4. How to Start an Action for Judicial Eviction**

- A. A judicial eviction action filed under the NHBP Rental Housing Code (“Judicial Eviction”) starts by filing a complaint for Judicial Eviction with the Court.
  1. Filing Required. A complaint must be filed, along with the payment of the filing fee, to initiate the Judicial Eviction action.
    - a. The filing of a completed Affidavit for Waiver of Fees with the Court is sufficient to start the Judicial Eviction action.
      - i. If the Court denies the request for a waiver of Court fees, the Landlord must pay the filing fee prior to the Judicial Eviction Hearing.
  2. Pursuant to § 401(G) of the NHBP Rental Housing Code and information required by the Court, the complaint shall contain:



- a. The name, address and phone number of the Landlord or the Landlord's attorney, if applicable;
- b. Whether the Landlord is a Native Nation, corporation, a partnership, sole proprietorship, or individual;
- c. The name, address and phone number of the person against whom the Judicial Eviction action has been filed, ("Tenant") or the Tenant's attorney, if applicable;
- d. If the Tenant was acting under an assumed name or business name at the time the claim arose, the assumed name or business name shall also be given
- e. The address of the rental unit;
- f. Whether the address of the premises has land-held-in-trust status and the laws that apply based on that status;
- g. The statutory grounds for eviction;
- h. A statement showing that Notice to Quit has been served according to the statute;
- i. If the Landlord is the NHBP Housing Department, referred to in the NHBP Rental Housing Code as the Nottawaseppi Huron Band of the Potawatomi Indians' Housing Authority, a statement that it has complied with all required regulatory processes prior to filing the complaint for Judicial Eviction;
- j. The relief requested, including any claim for damages, fees, costs or other special relief, which may include non-payment of rent or other costs between the time of notice and the execution of judgment described in Section 4.01(G)(5) of the NHBP Rental Housing Code; and
  - i. This *Chapter of Court Rules* provides an evidentiary hearing process by motion for damages that could not be determined or were not known at the time the complaint was filed.
- k. The following attachments:
  - i. A copy of the rental agreement between the Tenant and the Landlord;
  - ii. A copy of the notice to quit showing when and how it was served;
  - iii. A copy of any other documents that show compliance with statutory provisions if the Landlord is the NHBP Housing Department; and
  - iv. Any documents demonstrating proof of damages requested.

## **Section 5. Summons**

- A. In order to proceed with a Judicial Eviction, the Landlord must notify the Tenant of the pending action with the service of a summons that shall:
  - 1. Be signed by the Court Clerk;
  - 2. Contain the name and address of the Court;
  - 3. Contain the names and addresses of the parties;
  - 4. Be directed to the Tenant;
  - 5. Provide the Tribal Court Case Number;
  - 6. Provide the date on which the summons was issued;
  - 7. Provide the date and time set for the Judicial Eviction Hearing; and
    - a. Pursuant to the Rental Housing Code, a Judicial Eviction shall be held within fourteen (14) days of the complaint being filed with the Court
  - 8. Notify the Tenant that, if the Tenant fails to appear for the Judicial Eviction Hearing, the Hearing shall be conducted in the Tenant's absence and a judgment may be entered against the Tenant.

## **Section 6. Service of Process**

- A. Documents to be Served
  - 1. A copy of the complaint and summons, including attachments, shall be prepared for each Tenant.
  - 2. The summons and complaint, including attachments, shall be served together.
- B. Service of Process
  - 1. The Court shall facilitate personal service upon the Tenant of a summons and complaint for Judicial Eviction.
    - a. If attempts at personal service are not successful, the Court may facilitate service of process by certified mail, return receipt requested.
  - 2. If a summons is returned without being served, or if it has been lost, the Court Clerk may issue a substitute summons.

C. Amending a Summons. A summons may be amended upon motion of the Landlord for good cause and by permission of the Court.

D. Persons Who May Make Personal Service of Process

1. A Nottawaseppi Huron Band of the Potawatomi Tribal Police Officer; or
2. Any legally competent adult who is over the age of eighteen (18) and not a party or legal counsel in the action.

E. Effective Service of Process

1. There shall be effective service of process by delivering a copy of the summons and the complaint, including attachments, to:
  - a. The opposing party personally; or
  - b. To an agent authorized by appointment or by law to receive service of process, such as the opposing party's attorney; or
  - c. By certified mail to the last known address of the Tenant.

F. Proof of Service.

1. Except as otherwise provided in these Rules, proof of service may be included at the end of the paper as filed and:
  - a. By written acknowledgement of service;
  - b. Affidavit of the person making the service; or
  - c. Other proof satisfactory to the Court.

**Section 7. Signatures of Attorneys and Parties, Verification; Effect; Sanctions.**

A. Applicability. This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules.

B. Verification.

1. Except when required by rule or statute, a document does not need to be verified or accompanied by an affidavit.
2. If a document is required or permitted to be verified, it must include the following statement:



- a. "I declare that the statements above are true to the best of my information, knowledge, and belief."
  3. In addition to the sanctions provided in this Rule, a person who knowingly makes a false declaration under this rule may be found in contempt of court.
- C. Signature.
1. Every document of a party represented by an attorney shall be signed by at least one (1) attorney of record.
    - a. A party who is not represented by an attorney must sign the document.
  2. If a document is not signed, it shall be stricken from the record unless it is signed promptly after the failure to sign is called to the attention of the party.
- D. Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that:
1. He or she has read the document;
  2. To the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document:
    - a. Is well grounded in fact;
    - b. Is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
    - c. That the purpose of the document is:
      - i. Not to harass; or
      - ii. Not to cause unnecessary delay; or
      - iii. Not to cause needless increase in the cost of litigation.
- E. Sanctions for Violation. If a document is signed in violation of this Rule, the Court, on the motion of a party or on its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both.
1. Sanctions may include:
    - a. The amount of the reasonable expenses incurred because of the filing of the document; and
    - b. Reasonable attorney fees.

2. Sanctions may not include punitive damages.
- F. Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this Rule, a party pleading a frivolous claim or defense is subject to costs.

### **Section 8. Appearance by Attorney**

- A. An appearance by an attorney for a party is deemed an appearance by the party.
- B. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.
- C. All notices required by these Rules may be served upon the attorney.
- D. Notice of Appearance. An attorney must file with the Court an appearance which includes:
1. The name of the case;
  2. The Tribal Court Case Number;
  3. The party the attorney is representing;
  4. The attorney's name, licensing number, address and phone number
  5. Certification that the attorney represents no other interest whatsoever of any party to the cause or disclosing the interest.
- E. Duration of Appearance by Attorney.
1. Unless otherwise stated or ordered by the Court, an attorney's appearance applies until:
    - a. A final judgment is entered disposing of all claims by or against the party whom the attorney represents; and
    - b. The time for appeal of right has passed.
  2. An attorney who has entered an appearance may withdraw from the action or be substituted only upon order of the Court.
- F. Appearance by Law Firm. The appearance of an attorney is deemed to be the appearance of every member of the law firm.
1. Any attorney in the firm may be required by the Court to conduct a court ordered conference or trial; and



2. Submit an application for the NHBP Tribal Bar.

## **Section 9. Discovery**

- A. Pursuant to Section 4.01 (G) of the Rental Housing Code, discovery is not permitted before entry of judgment in a Judicial Eviction except for an evidentiary hearing on damages following the eviction of the Tenant.
  1. For damages to be addressed within the Judicial Eviction case, the Landlord must have:
    - a. Requested with specificity in the complaint the damages that were known at the time the complaint was filed; and
    - b. Reserved damages in the complaint by stating the reasons it could not plead damages with specificity in the complaint, such as not knowing the damages caused to the rental unit beyond normal wear and tear during the tenancy of the Tenant until the rental unit had been recovered by the Landlord.
  2. In a Judicial Eviction proceeding where damages were generally reserved, but could not be determined, in whole or in part, until the Tenant vacated the rental unit, the Landlord may file a motion for an evidentiary hearing on damages. The motion shall:
    - a. Be filed within thirty (30) days of the Landlord taking possession of the rental unit;
    - b. Be in writing;
    - c. State why the damages were not known at the time of the complaint;
    - d. State that the damages were generally reserved in the complaint;
    - e. State that the damages were incurred during the course of the tenancy;
    - f. State the damages;
    - g. State that the damages were beyond normal wear and tear;
    - h. State the relief requested; and
    - i. Include any documentation proving the damages or relief requested.

B. If a Landlord did not properly request or reserve damages in the complaint for Judicial Eviction, the Landlord must file a separate action for damages.

1. Independent actions for damages under the Rental Housing Code shall be filed pursuant to *Chapter 5 – Court Rules of Civil Procedure* or *Chapter 6 – Court Rules for Small Claims*, depending monetary amount of damages requested.

#### **Section 10. Hearing Procedure**

A. In all hearings for and related to Judicial Eviction commenced within the Court:

1. The witnesses shall be sworn;
2. Evidence shall be presented in accordance with *Chapter 7- Court Rules of Evidence*; and
3. The Judge shall conduct the hearing in a manner so as to do substantial justice between the parties according to the rules of substantive and procedural law and in harmony with the traditional values of the Nation.

#### **Section 11. Witnesses**

A. All witnesses shall take the following oath as administered by the Court Clerk:

“Do you swear or affirm to tell the truth, the whole truth and nothing but the truth by all you hold sacred?”

B. All witnesses are required to testify truthfully.

C. Failure of a witness to testify truthfully may result in contempt of court and/or criminal prosecution.

#### **Section 12. View**

A. On application of either party or on its own initiative, the Court may view property or a place where a material event occurred.

#### **Section 13. Burden of Proof**

A. Pursuant to § 401(G)(3) of the NHBP Rental Housing Code, the burden of proof is on the Landlord to show grounds for Judicial Eviction as contained in § 401(C) of the Rental Housing Code by a preponderance of the evidence.

B. With the Rental Housing Code allowing for damages in a Judicial Eviction in § 401(G)(1)(f), the burden of proof for damages is by a preponderance of the evidence.

## **Section 14. Judgment**

- A. The Court has equitable power to enter any order that is fair and just and may enter a judgment that includes, but is not limited to, ordering:
  - 1. The immediate eviction of the Tenant and delivery of the premises to the Landlord;
  - 2. The granting of damages to the Landlord for any injury or harm to the premises plus reasonable interest;
  - 3. The establishment of a payment plan for the Tenant;
  - 4. The assignment of wages, garnishment of wages or garnishment of per capita distributions, if applicable, for the payment of rent owed;
  - 5. The Tenant to perform work for the Landlord to pay off back rent, at an hourly rate to be determined by the Court;
  - 6. The payment of attorney fees, filing fees, witness costs or other costs; and
  - 7. Any other relief allowed by law or in equity.
- B. Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled.
  - 1. A default judgment shall not:
    - a. Be different in kind; or
    - b. Exceed the amount requested in the prayer for relief, original or amended.
- C. Multiple Claims or Multiple Parties. During a lawsuit the Court may enter judgments that dispose of fewer than all of the parties or claims.
  - 1. Unless specifically accepted by other rules or by case law these are not final judgments from which an appeal lies.
  - 2. Unless a stay is granted, such judgment can be enforced after entry.

## **Section 15. Entry of Judgments**

- A. All judgments shall be in writing and signed by the Judge who heard the case.
  - 1. The signing of the judgment constitutes entry of judgment.
  - 2. The judgment is not effective before entry, except that for circumstances and on notice as justice may require.



- B. Pursuant to § 401(G)(4), the Court shall enter a judgment within fourteen (14) days after a hearing.
- C. The Court Clerk shall forward the judgment to the parties as soon as practicable, but not more than one (1) business day after entry of the judgment.
  - 1. If the judgment is entered on the fourteenth day, the Court Clerk shall forward the judgment upon receipt.
  - 2. If the Court issues an order for eviction, the Court Clerk shall forward the order to the NHBP Police Department to execute the order of eviction pursuant to §401(G)(5) of the Rental Housing Code.

#### **Section 16. Rental Housing Code Actions Not Related to Judicial Evictions**


- A. The Rental Housing Code authorizes actions other than actions for Judicial Evictions and damages related to Judicial Evictions that are not included in this *Chapter of Court Rules*.
  - 1. *Chapter 5 – Court Rules of Civil Procedure*, shall govern these Rental Housing Code actions except:
    - a. Any time-frames specified in the Rental Housing Code shall supersede any conflicting time-frames and/or processes in Chapter 5.

#### **Section 17. Short Title; Effective Date and Citation Format**

- A. Short Title. These Rules are titled “*Rules for Rental Housing Code Judicial Eviction Proceedings*”.
- B. Effective Date. These Rules become effective when adopted by the Chief Judge of the Court.
- C. Citation. The abbreviated citation form for this Chapter of Court Rules is NHBPCR, Chapter 19.

## CERTIFICATE OF ADOPTION

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules on September 22, 2016.

  
\_\_\_\_\_  
Hon. Melissa L. Pope, Chief Judge (P55328)

September 22, 2016  
Date of Adoption

### JUDICIAL HISTORY

*The Court Rules for Rental Housing Code Judicial Eviction Proceedings* were adopted by the Chief Judge on September 22, 2016 after reviewing comments submitted pursuant to *Chapter 1 – Procedures for the Adoption of Tribal Court Rules*.