

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #01/17

**EVICTON PROCEDURES FOR HOUSING OWNED OR ADMINISTERED BY THE
FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

**Adopted by Resolution #1048/17 of the Fond du Lac Reservation Business Committee on
February 21, 2017.**

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**CHAPTER 1
GENERAL PROVISIONS**

Section 101. Authority

This ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, acting through the Reservation Business Committee as the governing body, as delegated in Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and as recognized by the United States under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4101 et seq.

Section 102. Purpose

The purpose of this Ordinance is to establish a uniform process for eviction of individuals who unlawfully retain possession of dwellings. This Ordinance shall be interpreted to preserve the peace, harmony, safety, health and general welfare of the Fond du Lac community and protect and balance the rights of landlords and tenants.

Section 103. Scope

- a. This Ordinance applies to evictions from dwellings owned or operated by, or managed pursuant to contract or delegated authority of the Band, Fond du Lac Housing Division, Fond du Lac Housing Authority, or any of their agents or assigns.
- b. This Ordinance shall not apply to leases of trust lands issued pursuant to Ordinance #02/15, as amended, Land Lease Ordinance; land assignments issued pursuant to Ordinance #02/11, as amended, Land Assignment and Land Lease Ordinance; leases of trust or allotted land approved by the Bureau of Indian Affairs; Fond du Lac Assisted Living Residence Leases; and leases or other interests subject to the foreclosure proceedings contained in Fond du Lac Ordinance #05/05, Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Fond du Lac Section 184 Loan Program, as amended.

Section 104. Reservation of Rights

The RBC reserves the right to amend or repeal all or any part of this Ordinance at any time. All the rights, privileges, and immunities conferred by this Ordinance or by acts done pursuant to

this Ordinance shall exist subject to the powers of the Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

Section 105. Jurisdiction

- a. The Fond du Lac Tribal Court shall exercise exclusive jurisdiction over proceedings brought under this Ordinance.
- b. Territorial Jurisdiction. Original jurisdiction shall extend over actions which arise within the exterior boundaries of the Fond du Lac Band of Lake Superior Chippewa Reservation, or upon other Indian Country within the possession or control of the Fond du Lac Band of Lake Superior Chippewa.
- c. Personal Jurisdiction. Original jurisdiction shall extend over all persons and entities within any geographical area referred to in Section 105(b) of this Ordinance who are subject to the jurisdiction and governmental power of the Fond du Lac Band, to the extent not prohibited by federal law.

CHAPTER 2 DEFINITIONS

Section 201. Definitions

For the purposes of this Ordinance, the following definitions shall apply:

- a. **“Court”** or **“Tribal Court”** means the Fond du Lac Band of Lake Superior Chippewa Tribal Court.
- b. **“Damages”** means payments owed by the lessee for unpaid rent of lease fees, for damages to the premises, or for other money due under the lease.
- c. **“Dwelling”** an apartment, building or group of buildings or portion thereof which is rented or leased as a home or residence, by any person, not including public transient accommodations such as hotel rooms.
- d. **“Eviction”** means removal of a person and their personal property from property or a dwelling by legal action.
- e. **“Fond du Lac Band,”** or **“Band”** means the Fond du Lac Band of Lake Superior Chippewa, a federally recognized Indian tribe.
- f. **“Lease”** means the written agreement establishing that the lessee has a right to occupy the premises. As used in this Ordinance, the term “lease” does not include leases subject to the foreclosure proceedings contained in Fond du Lac Ordinance #05/05, Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Fond du Lac Section 184 Loan Program or leases of trust land issued pursuant to Ordinance #02/15, as amended, Land Lease Ordinance.
- g. **“Lessee”** or **“Tenant”** means a person who has acquired a legal right to possess premises through a lease for consideration.
- h. **“Lessor”** or **“Landlord”** means a Fond du Lac Band owned, operated, or contracted entity that has been delegated the authority of the Fond du Lac Band to administer and manage housing and who has transferred to another person(s) a legal right of possession of premises through a lease for consideration.
- i. **“Petition”** or **“Petition for Eviction”** means a formal written request filed with the Tribal Court which includes any dispute between persons or entities which relate to the rental, use or occupancy of any dwelling.
- j. **“Reservation”** means the Fond du Lac Indian Reservation, as established by the Treaty of La Pointe of September 30, 1854, 10 Stat. 1109, and as extended by the Secretary of

the Interior in accordance with Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465.

- k. **“Reservation Business Committee”** or **“RBC”** means the duly elected Reservation Business Committee of the Fond du Lac Band established pursuant to Article III, Section 2 of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and recognized by the Tribal Executive Committee of the Minnesota Chippewa Tribe as the lawful governing body of the Band.
- l. **“Notice of Violation”** means an administrative action advising a party of an issue of non-compliance with their lease or agreement.
- m. **“Termination”** means an administrative action to end a person or entity’s lease or agreement.

CHAPTER 3
UNLAWFUL DETAINER PROHIBITED;
EVICTON RIGHTS AND DEFENSES

Section 301. Forcible Entry and Unlawful Detainer Prohibited

No person may occupy or take possession of a dwelling except where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner.

Section 302. Grounds for Eviction

- a. A person shall be guilty of unlawful detainer when the person has made unlawful or forcible entry into a dwelling and detains the same, or having peaceably entered, unlawfully detains the same; the person entitled to the premises may recover possession by eviction as provided in this Ordinance.
- b. The person entitled to the premises may recover possession by eviction when any person holds over a dwelling:
 - i) After a sale of a dwelling on an execution or judgement;
 - ii) After the expiration of the time for redemption on foreclosure of a mortgage, or after termination of contract to convey the dwelling;
 - iii) Without permission or agreement, following any reasonable demand to leave by a person in authority over the dwelling;
 - iv) After termination of the time for which it is demised or leased to that person contrary to the conditions or covenants of the lease or agreement under which that person holds;
 - v) After any rent becomes due according to the terms of such lease or agreement;
 - vi) After the expiration of any Notice of Termination of tenancy or Notice to Vacate a dwelling; or
 - vii) When any dwelling unit which had been vacant is currently in possession by a person who has no lawful right to occupy the dwelling.

Section 303. Retaliation Defense

- a. It is a defense to an action for recovery of premises following the alleged termination of a tenancy for the defendant to prove by a fair preponderance of the evidence that:

- i) The alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, or under the laws of the Fond du Lac Band of Lake Superior Chippewa or of the United States; or
 - ii) The alleged termination was intended in whole or part as a penalty for the defendant's report to a governmental authority of the plaintiff's violation of any health, safety, housing or building codes or ordinances.
- b. If the notice of termination was served within ninety days of the date of any act of the tenant coming within the terms of clause (i) or (ii) of subparagraph (a) of this section, then the burden of proving that the notice of termination was not served in whole or part for the retaliatory purpose shall rest with the plaintiff.

Section 304. Defense to Rent Increase as Penalty

In any proceeding for the recovery of premises upon the ground of nonpayment of rent, it is a defense in the proceeding if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in Section 303(a)(ii), providing that the tenant tender to the Tribal Court or to the plaintiff the amount of rent due and payable under the original obligation.

Section 305. Non-limitation of Landlord's Rights

Nothing contained in this Ordinance shall limit the right of the lessor to terminate a tenancy for a violation by the tenant of a lawful, material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under his direction or control.

Section 306. Combining Allegations

- a. An action for recovery of the premises may combine the allegation of nonpayment of rent, the allegation of material violation of the lease, and all other relief and damages sought to be recovered, which shall be heard as alternative grounds.
- b. In cases where rent is outstanding, a tenant is not required to pay into the Tribal Court the amount of arrears, interest, and costs to defend against an allegation by the landlord that the tenant has committed a material violation of the lease.
- c. If the landlord does not prevail in proving material violation of the lease supporting the termination of the lease, and the landlord has also alleged that rent is due, the tenant shall be permitted to present defenses to the Tribal Court that the rent is not owing. The tenant shall be given up to seven days of additional time to pay any rent determined by the Court to be due. The Court may order the tenant to pay rent and costs determined to be due directly to the landlord or to the deposited with the Court.

CHAPTER 4
PETITION; HEARING; JUDGMENT

Section 401. Petition for Eviction

- a. The entity administering the housing program under the authority of the Fond du Lac Band shall file a Petition for Eviction with the Tribal Court, and shall include the following:
 - i) The full name(s) of the adult person(s) against whom the complaint is made, and in the names of Jane Doe and John Doe if the name of the occupant is unknown;
 - ii) A description of the property of which possession is claimed;
 - iii) Identify the lease or rental agreement, if any;
 - iv) A statement of the facts which authorize the recovery of possession;
 - v) A statement showing that any required notice of termination or notice to vacate has been served in accordance with the terms of such lease or agreement; and
 - vi) A statement asking for recovery of the premises and any other monetary damages, fees, costs or relief sought.
- b. The petition shall be signed by the Director, Manager, or lead administrator of the entity administering the housing program under the authority of the Fond du Lac Band, and the attorney for such entity.

Section 402. Summons

- a. Within two days of filing the petition, the Tribal Court shall issue a summons, commanding the person(s) against whom the petition is made to appear before the Court on a day and time, and at a place stated in the summons.
- b. The appearance shall be not less than seven nor more than 30 days from the day of issuing the summons.
- c. The summons must include a statement notifying the defendant that failure to appear at the time, date and place set forth in the summons may result in default judgment against him and an award by the Court for the relief requested in the petition.
- d. A copy of the petition shall be attached to the summons, which shall state that the copy is attached and that the original has been filed with the Tribal Court.

Section 403. Service of Summons

- a. The summons, petition and notice of hearing shall be served by law enforcement or any person who has reached 18 years of age and is not a party or anticipated to be a witness in the case.
- b. The summons, petition and notice of hearing shall be served as follows:
 - i) By personal service on any tenant; or
 - ii) Leaving a copy at the defendant's last usual place of dwelling with a person of suitable age and discretion residing there.
- c. If service cannot reasonably be completed through personal service, then service may be accomplished by:
 - i) Posting the summons, petition and notice of hearing in a clearly visible place at the dwelling; and
 - ii) Mailing a copy via certified mail to defendant at defendant's last known address.
- d. An affidavit of service attesting that the summons, petition and notice of hearing was served in compliance with the requirements of this section and which method of service was used shall be filed with the Tribal Court.

Section 404. Answer by Defendant

- a. The defendant(s) shall be exempt from the requirement to file an answer in the Civil Code of the Tribal Court.
- b. At the hearing specified in the summons, if the defendant(s) appear, he or she may answer the petition and all matters therein, and the Court shall hear and decide the action.
- c. Unless the defendant(s) affirmatively admits an allegation, the defendant(s) shall be presumed to have denied all allegations in the petition.

Section 405. Request for Extension

- a. The Court may, in its discretion, for good cause shown, grant a request for an extension of time for the hearing, for no more than 7 days, unless all parties consent to a longer continuance.
- b. Upon motion of the plaintiff, the Tribal Court shall have discretion to require the defendant to post with the Court a reasonable sum for the fair rental value of the premises between the date on which the petition was filed and the date of the continued hearing.
- c. Notwithstanding Section 405(a), the Tribal Court shall not extend the hearing date where the petition is based upon conduct which is alleged to constitute a serious danger to the health, safety, welfare or peace of the public.

Section 406. Evidence

Evidence in proceedings under this Ordinance shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records will be received upon their presentation to the Court; provided, however, that the parties may examine the custodian of such records as to their contents.

Section 407. Burden of Proof

The burden of proof in all proceedings under this Ordinance shall be a preponderance of the evidence.

Section 408. Hearing

- a. If the Tribal Court, sitting without a jury, finds for the plaintiff, the Court shall immediately enter judgment that:
 - i) The plaintiff shall have recovery of the premises;
 - ii) If damages were requested, the Court shall make a finding of the amount of actual damages and order that damages are owed by the lessee or a finding that damages were not established; and
 - iii) All costs, and fees, including reasonable attorney's fees, shall be awarded to the prevailing party.
- b. The Court shall issue execution in favor of the plaintiff for the costs and also immediately issue a writ of recovery of the premises and order defendant to vacate.
- c. No stay of the writ of restitution may be granted except upon a showing by the defendant that the restitution would cause a severe and substantial hardship upon the defendant. Upon a proper showing by the defendant of severe and substantial hardship, the judge may stay the writ of restitution for a reasonable period, not to exceed 7 calendar days.
- d. If the party against whom the judgment for restitution is rendered or his or her counsel states to the Court an intent to file an appeal, a writ of restitution shall not issue for 72 hours after judgment, unless the complaint is based upon conduct which is alleged to constitute a serious danger to the health, safety, welfare or peace of the public, then the writ shall be issued immediately as otherwise required by this Ordinance, notwithstanding such notice of appeal.

Section 409. Form of Order

- e. If the finding of the Tribal Court is in favor of the plaintiff in an eviction action then the order shall be substantially in the following form:

At a hearing on the . . . day of . . . , year. . . , before the Hon. . . . , a judge in and for the Fond du Lac Band of Lake Superior Chippewa, in an action between . . . , Plaintiff, who appeared personally and was represented by. . . and . . . , Defendant, who appeared personally, and was represented by . . . , the Court finds that the facts alleged in the complaint are true, and that the Plaintiff shall recover possession of the premises and the Defendant(s) shall vacate the premises immediately.

Order

1. Plaintiff's petition for recovery of possession of the premises is GRANTED/DENIED.
2. A lien on any personal property of Defendant in favor of Plaintiff is GRANTED.
3. Plaintiff's petition for damages in the amount of \$. . . is GRANTED/DENIED.
4. Plaintiff's costs and fees in the amount of \$. . . is GRANTED. Plaintiff shall be entitled to an order allowing for the recovery of Court awarded costs and fees after filing an affidavit attesting to the actual amount of costs and fees.

LET JUDGMENT BE ENTERED ACCORDINGLY.

- f. If the finding is for the defendant, it shall be sufficient to find that the facts alleged in the petition are not true.

CHAPTER 5
EXECUTION OF WRIT AND APPEALS

Section 501. Execution of the Writ

- a. The eviction order and writ of restitution shall be personally served by an officer of the Tribal Police Department when possible, or other local law enforcement officer, upon the defendant if he or she can be found, or on any adult member of the defendant's family or household occupying the premises, within 72 hours of issuance, demanding that they relinquish possession and leave the property, taking family and all personal property from the premises, within 24 hours.
- b. If the law enforcement officer is unable to locate the defendant or any adult member of the defendant's family or household occupying the premises within 72 hours of issuance of the eviction order and writ of restitution then the officer shall post copies of the eviction order and writ of restitution on the doors of the premises and post a notice that the defendant is demanded to vacate the premises within 24 hours and include in the notice to the defendant the date and time to comply with the 24 hour demand to vacate and include the name of such law enforcement department authorized to post the order, writ and notice.
- c. If the defendant fails to comply with the demand to vacate within 24 hours, the officer shall be authorized to use the force of law, and if necessary, break in and bring any assistance, at the cost of the plaintiff. The officer shall remove the defendant, family, and all individuals from the premises and place the plaintiff in possession.
- d. If personal property remains on the premises then the officer shall supervise the removal of the possessions of the evicted person(s) by the plaintiff and obtain an inventory of said possessions. The inventory shall be signed by the plaintiff and the officer and filed with the Tribal Court by the officer.
- e. Plaintiff shall have a lien upon all the goods and personal property found on the premises for the reasonable costs and expenses incurred for removing the defendant and defendant's property. Plaintiff shall use reasonable precautions and pack and store the possessions of the tenant and other occupants of the property. The tenant may redeem his/her possessions within thirty (30) days by paying to the prevailing party the reasonable costs of storage of the tenant's possessions. Upon the expiration of the thirty days the Plaintiff may dispose of the possessions within his/her discretion.
- f. If any personal property is seized by any law enforcement officer or any other person after lawful entry of any judgment and said seizure involves a basic life-sustaining item

required for the general welfare of any person then that item shall be held by the Tribal Police Department and returned to the owner of such item upon request by the owner.

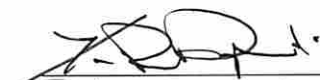
- g. If any ceremonial items are found within the premises then the officer and plaintiff shall take reasonable precautions for the safe transportation of the ceremonial items, including consulting with the Tribal Historic Preservation Officer when necessary. Such ceremonial items shall be itemized and safely stored with the Tribal Police Department until the owner(s) appears to reclaim such item(s). If the owner(s) does not appear within 365 days to reclaim the ceremonial item(s) then they shall be surrendered to the Reservation Business Committee to determine an appropriate method to donate or disseminate the item(s).
- h. Enforcement of other portions of the Order and Judgment shall be enforced in the manner otherwise provided by law.

Section 502. Appeals


- a. A party who feels aggrieved by the judgment may appeal within 10 days. All orders of the Court will remain in effect during the pendency of an appeal under this Ordinance unless a stay of execution is granted by the tribal Court.
- b. A defendant may apply for a stay of execution during the pendency of an appeal if the following is established:
 - i) Execution of the judgment could result in extreme hardship for the defendant;
 - ii) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; and
 - iii) A bond is posted or monies are paid to the Court, to satisfy the judgment or for payment for the reasonable use and occupancy of the premises during the period of the time following the judgment. No stay may exceed ninety days.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #01/17 was duly presented and adopted by Resolution #1048/17 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special meeting of the Fond du Lac Reservation Business Committee held on February 21, 2017 on the Fond du Lac Reservation.



Kevin R. Dupuis, Sr.
Chairman



Ferdinand Martineau, Jr.
Secretary/Treasurer