

KEWEENAW BAY INDIAN COMMUNITY

ORDINANCE 2019-01

Tribal Council Treasurer, Doreen Blaker, introduces the following ordinance.

An ordinance of the Keweenaw Bay Indian Community adopted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community for the purpose of amending Title Nine, Judgement, Execution, Replevin, and Eviction, to grant the Keweenaw Bay Indian Community Housing Department the authority to garnish a tenant's paycheck to recover for rent's owed to the Housing Department.

1. Amend Title Nine, Judgement, Execution, Replevin, and Eviction of the Tribal Code to add the following Chapter 9.5, Garnishment, after Chapter 9.4, Replevin, as follows:

§9.500 Definitions

- A. "Income" means any form of currency from whatever source derived, which includes, but is not limited to, Disposable Earnings and Earnings.
- B. "Disposable Earnings" means the part of the earnings of any individual remaining after legally required deductions, such as taxes.
- C. "Earnings" means compensation for personal services, including salary, wages, commission, bonuses, and payments pursuant to a pension or retirement program.
- D. "Tenant" means any person who is or was in a lease agreement with the Keweenaw Bay Indian Community Housing Department.

§ 9.501 Action for Garnishment for Unpaid Rent; When Available.

The Keweenaw Bay Indian Community Housing Department ("Housing Department") may bring an action against any Tenant who is subject to the jurisdiction of the Court under § 8.101 or § 8.309 for garnishment of the Tenant's Income to recover for rent due to the Housing Department. The Housing Department may bring an action if the Tenant is seven (7) days or more delinquent on rent.

§ 9.502 Limitation on Garnishment

The Court may garnish up to twenty-five percent (25%) of a Tenant's Disposable Earnings under Chapter 9.5. This limitation on garnishment does not apply to any Keweenaw Bay Indian Community disbursement to any person, including, but not limited to, the Keweenaw Bay Indian Community Assistance Programs or General Welfare Benefits as defined under the General Welfare Exclusion Act of 2014 (26 U.S.C. § 198E).

§ 9.503 Commencement of an Action for Garnishment.

- A. The Housing Department may commence an action under § 9.501 against any Tenant by filing with the Court a complaint.
- B. A complaint under § 9.503(A) need only specify the amount of delinquent rent due, state that the Tenant is seven (7) or more days' delinquent, and include legally admissible

evidence that shows the Tenant is delinquent. The Housing Department may request the costs of bringing an action in its complaint and these costs may be garnished from the Tenant in the Court's judgment.

§ 9.504 Summons; Service of Process

- A. Upon the Housing Department's payment of the filing fee set by the Court, the Court shall issue a summons and schedule a hearing on a date and a time within twenty-one (21) days of the date that the summons was issued.
- B. The Housing Department is required to serve the summons with the complaint to the Tenant at least seven (7) days prior to the hearing and must file proof of service with the Court. Any tribal police officer or any other person eighteen (18) years of age or older who is not an agent of the Housing Department may also serve to the Tenant.
- C. Service under § 9.504(B) shall be satisfied either by personal service or by certified mail, return receipt requested.

§ 9.505 Hearing; Burden of Proof

- A. The Housing Department and the Tenant shall appear before the Court at the time and place set for hearing in the summons. The Tenant shall be required to show he or she paid the delinquent rent due by clear and convincing evidence.
- B. The Housing Department shall have the opportunity for rebuttal.
- C. If the Tenant shows he or she paid the delinquent rent due by clear and convincing evidence the Court shall dismiss the action.
- D. If the Tenant fails to show by clear and convincing evidence that he or she paid the delinquent rent due, then the Court shall enter a judgment under § 9.507.

§ 9.506 Hearing Exemption

The Court may grant a judgment under § 9.507 without a Hearing under § 9.505 if the Tenant signs a statement affirming he or she is delinquent on rent and waives the hearing process.

§ 9.507 Judgment; Order for Garnishment of Unpaid Rent

- A. A judgment shall state the amount of delinquent rent that is due, the costs of bringing the action, and the amount of the Tenant's Income to be garnished. The judgment shall be satisfied and garnishment terminated when the delinquent rent amount and total cost of bringing the action is paid in full.
- B. The Housing Department may serve the judgment in a form acceptable to the Court on the Tenant's employer, requiring the employer to garnish the Tenant's Income in accordance with the judgment. The Housing Department may also serve a judgment on any individual, corporation, governing body, or any other entity that controls the Tenant's Income.

2. This ordinance shall have effect thirty (30) days as of the date of its adoption.

GARNISHMENT CHECKLIST

Step 1. Send a demand letter via regular mail.

- Not legally required to do so, but good process. Shows we tried to collect outside of court process.
- Include a date in demand for when you expect payment
- Can use a form letter or notice to quit with a demand for payment.
- Notes:
 - Often tenants will make a big payment all at once after they receive a demand letter. If the payment doesn't cover everything, can send a follow up letter giving them more time to catch up.
 - Can also start discussing a settlement agreement once the tenant responds to a demand letter.

Step 2. Prepare a complaint and file it in court.

- Complaint: Legal document that says the other party has breached their agreement with the Housing Department and owes the Department money.
- You will just need to fill in the blank information in the complaint, sign it in front of a notary, and file it with the court clerk. There is a template for one tenant and two tenants.
 - Can also file by sending a scan to the court clerk: courtclerk@kbic-nsn.gov
- Accompanying materials to include with the complaint when you file it.
 - Exhibit A – the Tenant's Lease.
 - Include the entire lease and all of the accompanying signature pages.
 - Exhibit B – Accounting Affidavit.
 - Proof that the Tenant owes KBIC rent. Have someone from accounting (Carla, Beth, etc.) fill it out.
 - Need to have the accounting clerk sign in front of notary as well.
 - Exhibit C – Accounting Ledger.
 - A recent ledger, showing the tenant's arrears. It is more proof the tenant owes us funds.
 - Ideally, print an updated one out the same day it is filed in court.
 - Exhibit D – Demand Letter
 - Include a copy of the demand letter. Not legally required, but good to show we attempted to recover the debt without going to court.

Step 3. Serve the complaint on the tenant or on each tenant.

- When you receive a complaint, you will receive a complaint back from the court with a summons on top of it. The summons is a one-page document that informs the tenant they have been sued.
- You need to give the complaint with the summons to the tenant (i.e. serve the tenant). You can serve them in either of the following ways:

- Cheaper Method: Certified mail, return receipt requested. YOU WILL NEED THEIR SIGNATURE AND MUST SUBMIT IT TO THE COURT.
- Personal Service (Tribal Police) – Tribal Police will fill out an affidavit saying that they served the tenant.

Step 4. Enter into a stipulation for consent judgment (a.k.a. settlement agreement)

- This is essentially an agreement between everyone on how to settle the complaint. Includes all the payment terms for how much the tenant will pay back per paycheck.
- Note – Payback cannot exceed 25% of the tenant's disposable income (after-tax).

Step 5. File the stipulation for consent judgment with the court.

Step 6. Court should grant a consent judgment.

- Try to receive a copy of it.
- Provide the court clerk via email the individual's employment information.

NOTE: SAVE COPIES OF EVERYTHING!!!

TRIBAL COURT
KEWEENAW BAY INDIAN COMMUNITY
L'ANSE RESERVATION
MICHIGAN

THE KEWEENAW BAY INDIAN COMMUNITY
HOUSING DEPARTMENT,
Plaintiff,

v.

Case No.

Defendant.

CIVIL COMPLAINT

The Plaintiff states and alleges as follows:

JURISDICTION

1. The Plaintiff is the owner and operator of the Keweenaw Bay Indian Community Housing Department, having its office at 220 Main Ave. #26, Baraga, MI, which is located within the exterior boundaries of the L'Anse Reservation.

2. _____, (hereinafter "Defendant"), who resides at _____ entered into a lease agreement with the Plaintiff.

3. This is a civil cause of action arising out of a breach of contract that was entered into between the Plaintiff and Defendant at Plaintiff's residence, which is within the Territorial Jurisdiction of this Court.

4. The Tribal Court has jurisdiction over this action pursuant to §§8.101 and 8.309 of the Tribal Code.

VENUE

5. Venue is proper in this Court because the parties and all or substantially all of the events, acts, or omissions giving rise to the claims of the Plaintiff against the Defendant occurred within the Territorial Jurisdiction of this Court.

FACTUAL ALLEGATIONS AND CAUSE OF ACTION

6. Defendant and Plaintiff entered into a contract for Defendant's lease of a residential home from the Plaintiff, (hereinafter "Contract"), and Plaintiff extended Defendant credit on an open account as a means of making payments on the Contract. (See Contract, attached as Exhibit A.)

7. Defendant continued to reside in the premises pursuant to the Contract and over the course of time accumulated an unpaid balance of \$ _____ as of _____. (See Accounting Affidavit, attached as Exhibit B; see also Accounting Ledger, attached as Exhibit C.)

8. Defendant is delinquent pursuant to the Contract in that Plaintiff has continued to allow Defendant to reside in the residence, but Defendant has not paid rent on a monthly basis as they agreed. Plaintiff has suffered damages in the form of lost profits.

9. Plaintiff has sent written demand to Defendant for payment of the balance due on the Contract, which Defendant has refused or neglected to pay. (See Demand Letter, attached as Exhibit D.)

10. Defendant has breached the Contract by Defendant's failure to pay to the Plaintiff the balance due on the Contract after demand therefore by the Plaintiff.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests this Honorable Court to:

- A. Enter a judgment finding Defendant's Contract with Plaintiff is breached and Defendant is delinquent.

- B. Enter a judgment against the Defendant in favor of the Plaintiff for the amount now due and owing of \$ _____ plus monthly charges still unpaid as of the date of the judgment.

- C. Garnish the Defendant's wages until the Judgment is satisfied.

- D. Award the Plaintiff its costs for bringing this action to Court and any such other relief as the Court deems just and appropriate.

Dated: **November 3, 2020**

Occupancy Specialist, KBIC Housing Department

Subscribed and sworn before me on _____, Baraga County, Michigan.

My commission expires: _____ Signature: _____

Notary public, State of Michigan, County of Baraga

**TRIBAL COURT
KEWEENAW BAY INDIAN COMMUNITY
L'ANSE RESERVATION
MICHIGAN**

THE KEWEENAW BAY INDIAN COMMUNITY
HOUSING DEPARTMENT,

Plaintiff,

v.

Case No.

Defendant.

STIPULATION FOR CONSENT JUDGMENT

Plaintiff and Defendant hereby stipulate to the entry of a Consent Judgment by the Tribal Court in the above captioned case in accordance with the terms and conditions as set forth below:

1. The Plaintiff shall have a Consent Judgment against the Defendant in the amount of \$ _____ plus the Plaintiff's filing costs for bringing the action to Court ("balance").
2. Defendant shall make payments to the Tribal Court to satisfy the amount as follows:
 - a. Defendant's paycheck shall be garnished in the amount of \$ _____ per paycheck.
 - b. Defendant's paycheck shall be garnished until the balance is paid in full.
 - c. Plaintiff agrees to dismiss this case with prejudice when the balance is satisfied.
 - d. Plaintiff may motion to amend this Consent Judgment if Defendant's open account with the Plaintiff incurs additional delinquencies. Plaintiff shall provide notice via first-class mail to Defendant of any motion to amend this Consent Judgment.
 - e. Plaintiff and Defendant do not request a hearing and request that this Consent Judgment with the terms be entered without a hearing.

WHEREFORE, the parties respectfully request this Honorable Court to enter a Consent Judgment as described above.

Plaintiff
Keweenaw Bay Indian Community
Housing Department

Defendant

By: _____

By: _____

Occupancy Specialist

Date: _____

Date: _____

TRIBAL COURT
KEWEENAW BAY INDIAN COMMUNITY
L'ANSE RESERVATION
MICHIGAN

THE KEWEENAW BAY INDIAN COMMUNITY
HOUSING DEPARTMENT,

Plaintiff,

v.

Case No.

Defendant.

AFFIDAVIT OF AMOUNT DUE

I, _____, being first duly sworn to the undersigned authority, hereby depose and state that:

1. I make this Affidavit based upon my personal knowledge and in support of the Plaintiff's Civil Complaint in the above-captioned matter.
2. I work in the Keweenaw Bay Indian Community's Housing Department. My duties and responsibilities include keeping the accounting records for the Housing Department residential tenant's accounts.
3. There is an open account related to a lease agreement with Defendant.
4. Defendant's account on the lease is past due in the amount of \$ _____.
5. Defendant has continued to reside in the home located at _____

at a rate of \$ _____ a month.
6. Defendant's account has carried a past due balance for _____ months.

7. In addition, I prepared the Ledger History contained in Exhibit C of the Complaint in the regular course of business contemporaneously with Defendant's payments and amounts becoming due as provided under the lease.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this _____ day of _____, 20____. _____

KBIC Housing Department

Subscribed and sworn before me on _____, Baraga County, Michigan.

My commission expires: _____ Signature: _____

Notary public, State of Michigan, County of Baraga